

Advanced Principles of Trust Construction, the Privacy of Contracts, Education of Trustees,  
with Emphasis on Leadership and Working Within the Adverse System.

# THE ART OF PASSING THE BUCK

VOL. TWO

TRUST  
BLUEPRINTS

FOR THE SERIOUS STUDENT  
AND PROFESSIONAL

CHARLES ARTHUR



# The Art of Passing the Buck

Volume II

Trust Blueprints

*For the serious student and the professional*

Charles Arthur



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## Warning and Special Notes

**I**nformation in Volume II assumes the reader has read Volume I and is clear about his or her needs and what Trust is appropriate. If you have not read Volume I, we suggest you get a copy because this work makes references to it.

The reader takes full responsibility for use of all formats and samples shown in the Appendix, and the implementation of other information given throughout this work.

It is impossible to share all available and needed data and forms in a book to create a Trust. This Volume II serves as a guideline, and it is expected that what the reader needs will be extracted or edited, and all references will be researched.

It is the intention of those who have contributed information to create Volume II to bring clarity to the subject of all Trusts. Although Volume II leans toward the formation of an Irrevocable Common-Law Trust, all those interested in creating Statutory Trusts are welcome to use information here as needed.

This book has not been prepared by lawyers. The contributors have actual, hands-on experience with Trust Administration. We hope the finer points of law and any debates which may result from this work only enhance the basic concepts and overall understanding of Trust creation principles.

We do not claim to be right, nor are we suggesting the formats here always work. This book is based on experience and research, and nothing else. Use it with this understanding.

### **Fictitious Names**

We have created many examples, using fictitious names of people. If these names used happen to be similar or the same as a real person, we apologize.

We have also used names of real people as reported in court cases.

### **Disclaimer**

Information is provided by lay people for educational purposes only. Error is admitted throughout. Nothing can be believed except as is proven by independent research. No legal advise is intended or given. The provision of legal information does not constitute legal advise. If a legal opinion is needed, obtain one from a licensed counsel.





## Acknowledgments

**B**ecause of privacy issues, the people contributing directly to this work will remain unnamed. Those people who have gone before us, though, have dared to step forward, even without sufficient information, to bring the Common-Law Trust principles to light. Mentioned within this work are many who have been challenged by the IRS and lost assets or been jailed. There are those who have succeeded in their battles. Each case shows another part of an intricate puzzle.

Sometimes the Irrevocable Common-Law Trust is greatly diminished by those who have no experience with it, but who have heard that it “doesn't work.” We present herein what works, and has proved to work from interaction with banks, financial institutions and courts; otherwise, why would we make such an effort?

We came across a CPA with the mind set of most, that no Common-Law Trust could be viable. Hired by a Florida estate to research the Common-Law Trust feasibility, a lawyer friend of his discovered the laws backing its legality. Excitedly, she called the CPA to share many of the details. He became enthused. Due to lack of enough information, though, his first venture with the Common-Law Trust got him tangled up with a scam set up. He knew what he was told by the people selling the Trust was not logical, but he was not clear about what was wrong. Approximately a year later, he heard people discussing the issue of the adverse Trustee on the radio, and then knew what was missing about the current format in which he found himself.

He has since become involved with a properly set up Board of Trustees and has learned much more than can be shared in any book.



## Foreword

*The Art of Passing the Buck, Volume I*, serves as a primer to a complex, little understood, perhaps even intimidating subject. Aimed and designed for a mass audience, we hope it jump-starts awareness about a significant issue affecting many lives. Volume I allows people to get an education about Wills and Trusts without initially seeking a lawyer or going to a law library. At the same time, professionals get a point of view previously unknown.

All this is in the past. By both pricing and narrowed subject matter, anyone holding this book is both serious and motivated. Here, we get into the nuts and bolts of how you go about properly setting up and running your own Trust, whether it is an Irrevocable Common-Law Trust or not. We take on the challenge of untangling facts about Trusts in general, and to separate the myths from the truth about the Irrevocable Common-Law Trust, as it is an incredibly powerful legal instrument.

While we mostly focus on the Private Trust, we know the information we share is valuable to those who have or need a Statutory Trust.

Court and IRS Tax rulings are found in several chapters. You can see the differences between a properly set up Irrevocable Common-Law Trust and its more well-known, illegal cousin, the scam Trust.

We show you how to set up and keep good Minutes,<sup>1</sup> the lifeblood of a Common-Law Trust, and show you how to log and keep track of the various properties composing the corpus of any Trust. Here, we also go into the other critical part of your Trust: getting and keeping good people and the art of ridding your Trust of those who do not measure up—without wrecking your family and Trust assets.

We provide you with a specialized toolbox of information, but without proper mentoring, there will be limits. Why? Because you will not have the hard-won experience and practical know-how gained in over thirty years of painstaking research and experience into a topic many have never even heard of, let alone practiced.

A head chef can give you the finest ingredients, let you use top quality cookware and cutlery, and cook in a superbly equipped kitchen, but if you lack culinary talent, even armed with the recipe the food will be terrible. The same holds true here. Inadequate knowledge and improper application of same cannot only be potentially ruinous, but can get you jailed. We aim to avoid those problems through proper mentoring at the

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<sup>1</sup> See Appendix D for Minutes.



beginning, answering questions as they arise, and through keeping you updated on developments which apply to your Trust.

Welcome, then, to a giant step in creating a wonderful future for you and yours, as we together embark on a journey where few have ever been, and some hope you never go. In your continued ignorance, you see, lie their fat profits.

Volume I showed you the door, Volume II gives you the “Keys to the Kingdom.”

# Introduction

## Taking Action

Even to those fully familiar with the legal protocols, Trusts and Trustees can be as foreign as falling into the middle of a Brazilian jungle. Just because someone is a defense attorney, or specializes in real estate law, does not mean he or she is familiar with Trust documentation and procedures. Therefore, no one is to assume that a law degree creates a brilliant Trustee. Again, as pointed out in Volume I of *The Art of Passing the Buck*, Trustees need mentors and teachers too.

Although a lawyer may have a distinct advantage when it comes to dealing with the courts, he or she is not necessarily skillful with investments, accounting or handling Beneficiaries. This is why those with a good business sense are just as qualified to become Trustees.

There are many considerations you must make before taking on the role of a Trustee or in setting up a Trust. These issues appeared in Volume I. Here, though, we go into greater detail, such as just how complicated is it to become a Trustee and manage a Trust? What are the long-range results of decisions? What are the details of a Trust Indenture? What does Trust Administration entail? These are some of the questions we plan to answer in this version of *The Art of Passing the Buck*.

As we did in Volume I, Chapter 1, we start with a basic story to alert you to some of the real problems and solutions inherent with a Trust. The following article explains another one of the problems when a Living Trust turns into an Irrevocable Trust after the Grantor passes. In our Introduction in Volume I, the Grantor took few to no precautions to ensure the transfer of his legacy. In the following interview you will discover the intent was to ensure the wife became a Cotrustee and that she had access to the funds. Sometimes, though, to carry out specific, clear-cut goals we must break through walls, or at least endure a bumpy ride. In this case, both occurred.

In our tale below, we have an erudite former CPA and lawyer, with a broad and sufficient background, taking charge of a complicated mess.

## Diligent Administration Pays Off

Jim Thomas is a court-appointed, independent Cotrustee on a large Trust that was revocable until the death of the Grantor in 1982. The Grantor left the estate to his wife as Cotrustee and appointed his personal attorney as the other Cotrustee. Because the attorney was not able to assume his responsibilities, a business acquaintance of the

Grantor, originally named as the Successor Trustee, became the Cotrustee, and that is when complications started. Jim became involved when an associate, familiar with the circumstances, asked him for advice after fourteen years working with this on-going problem.

Before we get into the details of what it takes to recover squandered and lost assets, our readers need to know Jim's background, and how he came to be a court-appointed Trustee.

With a bachelor's degree in accounting, Jim worked for one of the Big Six accounting firms before he became a CPA. Needing something more rewarding, he left accounting to attend Law School. After graduation he practiced law for about 18 years.

The general practice of law, again, left Mr. Thomas unsatisfied. As he became more involved in estate planning, he gained the satisfaction he needed. He also felt he helped people instead of trying to "beat the people on the other side of cases."

He explains, "The arguing, posturing and nitpicking I had to do as an attorney wasn't something with which I was comfortable. Doing estate planning brought peace of mind to my clients and their families, something I found infinitely more rewarding."

In the early and mid-70s, Jim and his partner did many presentations for major insurance agencies, all on the Living Trust. This subject was controversial at the time. Norman Dacey's book, *How to Avoid Probate* had only been out a few years, and the legal profession fought to keep its probate fees by trying to discredit the Living Trust as an estate-planning tool. Because of Jim's expertise in estate planning and using the Living Trust, he often did seminars for securities brokers, and financial planners. From these he gained more clients, and before Jim left the practice of law, he and his firm had created about 3,000 Trusts. He had lectured at hundreds of seminars.

Jim became involved in the mid-80s using the Common-Law Trust and foreign situs Trusts for estate planning. When the IRS cracked down on the tax uses, he concentrated on conventional estate planning using Revocable Living Trusts, pour-over Wills, durable powers of attorney, Irrevocable Trusts of various kinds, and Charitable Remainder Trusts.

Jim found all the client work exhausting, although he did not mind the seminars. Over time, explaining the same principles over and over lost its appeal. Further, since law was not his favorite subject anyway, he gave up the practice and went into the business of brokering real estate loans.

An attorney friend of Jim's in San Diego called him in 1996 with a client's problem. How could a Cotrustee get information from her other Cotrustee? The client had called and written the Cotrustee several times with no results. What assets are in the Trust? What is it earning? This woman, though a Cotrustee, did not know whether she was rich or poor! After weeks of trying to get information without success, she brought legal



action against the Cotrustee and Jim became appointed the new Cotrustee in place of the silent one.

This is where all the excitement began. The old Cotrustee was quiet because he was using the Trust's money with friends and acquaintances to make himself look good. This means, he more or less "gave" money away. Fortunately, he kept good records. By tracking a trail of transactions, Jim eventually found many of the funds.

Diligent management and legal action during the last four years<sup>2</sup>, reconstituted the Trust to its original level. Notes collected, properties seized and sold and settlements negotiated brought results.

Jim reports, "It feels good to help someone who deserves it, and to see this client happy and able to enjoy life rather than worrying about her finances. She now has an exact accounting of her finances, and can now enjoy her family and retirement with contentment."

As a general statement, Jim finds most problems with people who set up a Trust occur because they do not take care of it. They do not identify the assets that are part of the Trust corpus, they do not file taxes properly, and they try to cut corners in some way. **Proper Trust administration takes dedication and a time commitment.** There is no need to incur legal or excessive administration fees, other than normal costs such as year-end tax preparation.

Jim has noticed how, well thought out estate planning, women—even those who have never balanced a checkbook before their husband passed away—take charge of their affairs. They move on with their lives in ways that have inspired him. "That's the real reward of helping a couple set up its affairs well," he comments.

### **The Smoldering Trail**

Fourteen years after the original events started, Jim became a consultant in this Trust matter. An associate attorney, frustrated by the replacement Cotrustee's stonewalling, sought Jim's notable Trust expertise to resolve the matter and get the missing answers. This turned into legal action, which led to the ouster of what turned out to be a textbook case of Trust mismanagement, and use of Trust funds for personal gain. Jim then became Trustee. But let Jim Thomas tell us, in his own words:

CA: When you first heard about the trouble with this Trust, was it an ongoing saga in the background of your life, or was it sudden, where your associate called you, explained the situation, then asked you to become involved?

JT: Sudden call, out of the blue. The attorney was a friend in San Diego, someone with whom I had become acquainted during my years of professional practice.

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<sup>2</sup>

Article written in 2001.

We were also personal friends. He called fairly often when he had estate-planning questions. His expertise was real property law, but he had a fair number of estate-planning clients also.

CA: What persuaded you to take on this challenge?

JT: I am at a stage where I am more intrigued by the challenge and the cause of a situation, or trouble, than anything else. This seemed quite different, and fascinating. It seemed unfair that this nice lady client should be sleepless, anxious, etc., over her financial situation, especially, when by everything we knew, she should have been quite comfortable.

CA: Explain what court-appointed means? Did you have to be interviewed by a judge? Did you have to fill out paperwork? How long does the process take?

JT: The court took jurisdiction because we had petitioned the court, on behalf of the client, to have the court force the Cotrustee to provide the information he was supposed to provide under the terms of the Trust. It typically takes 30-45 days to be heard, i.e., to have the court hear what each side claims, and then the judge makes a decision.

Because the recalcitrant Cotrustee failed to appear in court, in our case it took a little longer to resolve. When it became obvious that the missing Cotrustee wasn't going to obey the court's order, we amended the petition and had him removed. The client asked that I be appointed in his place.

In addition to the court paperwork to get all of these changes approved and in order, the court required that I qualify for a bond from a private insurer, which I did. The court respected the wishes of the client and then appointed me as her Cotrustee.

In an emergency, a court will appoint a Trustee in a day or two, but there needs to be an exceptionally good reason to rush the process. In a situation where there is a friendly replacement, the old Trustee is usually happy to relinquish his duties to a new Trustee. The process should take 30-45 days. As soon as someone objects, or causes problems, as in our case, it takes longer. Working diligently, it took four months to get the court to make the change in our matter.

You should note that if the Trust is well thought out, changes in Trustees can be made without a court action. This is an area where a little thought and a few more sentences in the Indenture can make all the difference. A Trust should be a private and confidential document, and failing to provide for the orderly change of Trustees is simply poor planning.

CA: Did you have any clues about what you were getting into?

- JT: I had no clue. We knew that when the husband passed away, the client should have had an estate somewhere in seven figures, but we did not know the starting number, nor did we know that over half had been dribbled out to friends and acquaintances of the Cotrustee's without adequate security or documentation.
- CA: In what condition were the records? Was this like putting together a puzzle? Do you like puzzles?
- I love puzzles, especially financial ones. The accounting records were actually in good condition when we got into them, but the legal records, including the operation of the Trust, were in a mess, if they existed at all. For example, out of 18 boxes of records, we would need one canceled check, then follow the trail of the money after we discovered where it had been deposited. We spent many hours at the County Recorder's offices looking for transactions and related documents, subpoenaing bank and other records, and gathering documents as part of the ensuing legal actions. We took depositions from parties, as well as conducted interviews of anyone who knew anything about the history of the Trust. The laborious part was tracing funds from account to account, party to party, until we knew who ended up with the money and we could hold them accountable.
- CA: What happened to make you realize that something highly unusual was going on?
- JT: Before we got the records, we went to the office of the Cotrustee who had promised to give them to us. He did not show up, but his secretary did and confessed, 'half the money is gone.' Needless to say, none of us could breathe. In our wildest imagination we couldn't have guessed that he had been that irresponsible.
- CA: How many times did you meet with the previous Cotrustee?
- JT: I count it as a sign of some character on the Cotrustee's part that he was embarrassed enough to never allow himself to be confronted by the client or myself. I've never met him. We did get a written statement in connection with our lawsuit against him, but that was it. We still do not know why he acted the way he did, and my guess is that he doesn't know either.
- CA: Please explain how the Trust Indenture did not address this situation.
- JT: This is another case where the Trust was actually OK, but the administration was lousy. The Cotrustee was required to account to the client at least annually, but did not. Where the Indenture failed was in providing for a Successor Trustee. There was no provision beyond the first two Trustees as to what would happen if they failed—and they did. The first named Trustee never served



because of health problems, and the second served irresponsibly. The Trust did not say what happened after that.

CA: How can you sue people to recover money that the previous Cotrustee had the authority to give away?

JT: There was no authority for the Cotrustee to make gifts, so the funds he passed out had to be loans or investments of some kind. Some of them had some documentation that they were supposed to be loans or investments, and some were just carried on the books of the Trust as accounts receivable. If nothing else, there is what is called a "common court" at law that simply says, 'you got the money, and you should pay me back now.' That allegation is made as part of a *Complaint*, which is the document that starts a lawsuit to collect the debt.

CA: How long did it take for you to recover the assets, and what percentage of the Trust had been "liquidated?"

JT: We are still not completely done. So far, it has taken us four years. We have some assets we took as part of settlements, and those have various problems that take time to get past before they can be put into the Trust. We also still have a legal action against an agent of the Cotrustee for mismanagement of the assets in his care and control. This is another side of the administration problem. The Trustee really needs to oversee and check on the people he hires, to be sure their responsibilities are correctly executed.

CA: This has been enlightening. I thank you for your time, and I am sure our readers will appreciate the experiences you've passed on.

JT: As you can see, I do enjoy being a Trustee, and I am happy to share this experience, in the hope it may be helpful to others who are involved in the Trust system process.

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## Dedication

***T**his book's purpose is to empower family members to fulfill dreams and obligations to one another; find harmony, peace, resolution and satisfaction. May this information enhance trusting one another, and encourage you to explore all possibilities together.*

## Chapter 1: The Art of Administration

**A**s explained in the Introduction, the key to the success of any Trust is administration. This is a skill set gained by doing. Although business administration is taught in school, the test is implementation of the lessons and seeing the results of decisions.

Communication becomes the baseline of administration. The use of words, the skill in writing, the report of events through Minutes can win or lose a conflict, and although rarely needed, they become testimony in legal challenges, create or destroy relationships with Beneficiaries and can haunt you because of a thoughtless mistake for the rest of your life.

Where and how Trust documents are kept also becomes a matter of survival. Trustees may think filing is a routine, simple matter. Passing the task off to a humble file clerk uninitiated in Trust administration may prove to be a disaster. Through simple ignorance or intention this menial file clerk can do you in. If you need signed Trust documents, and suddenly cannot find them, the complications range from frustration to a loss of opportunities and funds. And to underscore how important organizing your papers are, a not-so-uncommon trick in the courtroom is when a lawyer leaves papers on a table and then becomes distracted, the opposing attorney messes up these essential documents. Because references and facts cannot be found, often the decision goes, unfortunately, to the attorney who took advantage.

### **The Watchful Eye**

The Trust rises and falls on administration protocols. At least one member of the Trust group needs to care enough to handle the paperwork properly, ensure signatures are in the right place, and see to completing documents. This can be anyone who has signed a privacy agreement and holds a position as an officer of the organization.

In one Trust group, one person manages these matters for several Trusts. A sophisticated follow up has been designed, and Trustees, General Managers and Executive



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Secretaries become the recipients of constant reminders to ensure that matters remain in order and continue to flow.

The demands of paperwork are intense. Nothing can slip through the cracks because the organization is about taking care of others. Handle correspondence professionally on suitable Trust letterhead with signatures when necessary.

### **The Board of Education**

Board of Trustee Meetings should happen no less than twice a year. They provide the core of the education for Trustees. Every time there is a meeting, members discover the broader purposes of the Trust's long-range goals. The Minutes taken at the meeting must be accurate. These are legal documents and can testify to substance of transaction, or they can get the Trust into unending trouble. A novice cannot take care of the Minutes. We devote a chapter to Minutes. In the Appendix<sup>3</sup> are a suggested Agenda for a Board of Trustees Meeting and sample Minutes. We will go over the details later in this book.

### **Agreements Equal Cash Flow**

Contracts become integral to daily Trust matters. If funds to pay high-end vendors or private contractors are not approved, there can be endless confusion and frustration. For every matter that needs a contract, be sure one of the members of the Board of Trustees puts one together.

We know some of you doubt you can write a contract.

Our answer to you is, "Sure you can. There is enough legal software around, and you can figure it out. You do not have to run to a lawyer every time you need a contract." In our chapters about legal issues, we include a discussion of contracts. We also include examples in the Appendix.<sup>4</sup>

People need to grow into the administration. You will find people to help you. You need contracts between Trusts or other companies so services or management can be performed. You need contracts with people who work for the Trust, such as General Managers and Executive Secretaries. Caretakers to property need contracts, as well as lease agreements if Trust vehicles or rental property is used by Beneficiaries, as well as other companies.

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<sup>3</sup> Appendix D Sample Format 17

<sup>4</sup> See Appendix G.

To ensure there is no question where money flows, detailed contracts form the bedrock of clarity.

### **Inventory Documentation<sup>5</sup>**

Inventory is another item that falls to the administrative staff. If there are expensive paintings and collectibles, have they been tagged, photographed, or logged into the Trust? Does someone on the Board of Trustees know where they are? This is a perfect job for Beneficiary training.

### **Accounting**

Accounting is part of the Trust's administration. A Trust with a monthly cash flow of about \$5,000.00 takes six to ten hours a month of accounting time. This includes bill payment, handling Beneficiary payments,<sup>6</sup> posting funds received, going to the bank to make deposits, and preparation of reports. Here, again, is a good position where a Beneficiary might be able to work into a long-term position with the Trust.

The person in charge of bookkeeping will, in the long-run, need to understand complex investments, and thus can act as an adviser to the Board of Trustees. Choose accounting software that handles investment. Not all of it does.

After funding the checking account, one of the Trust members needs to take responsibility to get the financial reports handled. Because of transfer activity and complications of setting up new investment accounts, print standard financial reports, such as Profit and Loss and Balance Sheets, monthly. When the Trust begins opening new investment accounts this creates many changes, and sometimes confusion among the Board members. These reports ensure that all members are on the same page, and act cohesively.

The person keeping the books should be an account manager involved with Trust management, such as the Executive Secretary or the General Manager.

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<sup>5</sup> See Appendix I for Inventory formats.

<sup>6</sup> For the sake of legal clarity we distinguish between the word "distribution" and the word "disbursements." Distribution refers to the apportionment and division, under authority of a court, of the remainder of the estate of an intestate. Disbursements refers to money expended by an executor, guardian, Trustee, etc., for the benefit of the estate or in connection with its administration. We also use the word "distribution" in its more common form, used in a standard dictionary.

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The key to the success of any Trust is proper administration. This is true of the Common-Law Trust because of the intricate Certificate Register, and the need to have Board of Trustees Meetings that need Minutes. The Trustees watch over not only the family, Beneficiaries and business, but the family assets, including homes, automobiles, jewelry and many other types of property, tangible and intangible (such as insurance policies, stocks, bonds, copyrights, patents, trademarks) and real estate.

### **Family Involvement Broadens**

A trait unique to the Common-Law Trust is to transform mere “family matters” into true business interests. This restructuring works magic to bring a family together. The wife, who may have been “just” a homemaker or home schooling the children, can now develop latent talents. As an active member of the Board, she learns about the investments and possibly finds that she can deduct some of her household costs as business expenses.

Both she and her husband may discover the commonsense economy she has needed to make the family’s income stretch to the last day of the month now comes in handy in the broader scope of the organization. Gradually, parents learn more effective ways to plan their family’s future.

### **Education of the Heirs**

Through involvement in Trust management, the children, as heirs to the family fortune, become properly educated to prepare for their new roles in the Trust. Now they are Beneficiaries and have a stake in its success. Showing them how to create a deposit slip, pay the bills, or have them included in the Board of Trustees Meetings can work wonders. As this happens, you will likely see a surge in their respect for themselves and others, their willingness to “pull their weight” with chores and other duties, to complete their schoolwork (and ask for *more!*) Being included contributes to their maturity, becoming worthy Beneficiaries and potential Trust officers.

Education, traditionally a long-range financial planning concern of families, now becomes a matter for the Board of Trustees. Educating family members in such subjects as accounting, finance, business administration and law,<sup>7</sup> makes them contributing members to the Trust group. This adds to the potential of expanding this family business. This level of planning requires parents to handle children appropriately to get them interested in the Trust when they are young. Inviting them to Board of Trustee

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<sup>7</sup> If your Trust cash flow increase is based on a particular asset type, then the educational cost relating thereto may be deductible. Consult with a tax advisor.

meetings, when parents feel it is appropriate, sets children up for greater future participation. Herein lies the key to perpetuating wealth, developing the Successor Trustees and Managers now.

As a bonus, thanks to the tax advantages for all Irrevocable Trusts, the Beneficiaries pay the taxes on their share of the Beneficial distributions, reducing the liability of the Trust. This means that profits, taxable under other circumstances, now “passthrough” the Trust to the Beneficiaries. Further, as we mentioned in Volume I, generous gifts taken as expenses are a deduction for the Trust and reduces taxes. These funds can be put away in a savings account or invested for the college education of the Beneficiaries.

### **Daily Responsibilities**

The Grantor can be the driving force behind the Trust, but needs administrative (and, sometimes, moral and emotional) support from the Trustees, other officers and family. They not only serve as his or her advisers but shoulder some of the duties of managing the family. Many times, the Grantor proves to be a problem. If he or she becomes involved, the Grantor may still believe this is a personal pile of cash and forget he or she gave it away.

Organizing a Trust makes a significant amount of paperwork. An important amount of time is spent making trips to banks and other institutions. As the Trust matures, the volume of paperwork drops to a routine and easily managed level. Also, this part of the administration should be handled mostly by the Trust's Executive Secretary, who is in a unique position to keep proper procedures and to ensure Trust documents are treated correctly.

Should the Executive Secretary not be inclined to deal with all the details of the paperwork, he or she may delegate them to a secretary or secretarial service. An Oath of Privacy or confidentiality agreement needs to be signed. This individual or group can assemble or produce all necessary documents and deliver them for the Executive Secretary's review and signature.

The Board of Trustees will most likely meet either monthly, every two months or quarterly during the first year, after which the frequency will either increase or decrease, depending on the Trust's activity. It may meet as rarely as once a year if the activity level is low.

An active Board develops a strong camaraderie as its members interact with the Grantor and get to know one another. As mentioned above, this cohesiveness is one of the greatest strengths of a Family Trust. People who support and rely on one another can be a force to deal with should any outside interest threaten to disrupt the smooth operation and regular cash flow of the Trust.

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### **Training**

In our collective experience, most Trust services aid only the Grantor to set up an Irrevocable Trust. Few training resources are available for other levels of administration. Yet, the proper application of administrative procedures is vital to ensuring the Grantor's support and relief from many of his or her duties.

It is helpful if Trust members take courses in accounting, and get exposed to legal issues. Although not the most pleasant task, sitting in a courtroom to listen to matters being discussed and debated before a judge can be an enlightening exercise. As frightening as it might seem, Trustees who are not lawyers do, sometimes, need to go before authorities to argue their cause. Although the fledgling Trustee cannot imagine doing this, with sufficient maturity in the position, enough knowledge and ample support, you soon discover that as frightening as it sounds, it is doable.

### **Miracles Do Happen!**

Here is an event that surprised many of us in the Trust business.

Although she had few assets, Mary put her own business into a Common-Law Trust. The business yielded a sufficient but minimum cash flow. Not in a position to do much with her Trust, she opened one of the two checking accounts, and because of the vicissitudes of life, never got around to completing it. She could never settle down enough to grasp how the Trust worked, and exactly what was necessary so the Trustees could work with her to build up the assets.

A year later, she fell in love. Not with just an average, hardworking, nine-to-five person, but one who had substantial income and assets. He paid extraordinary taxes and became astounded at the tax benefits of a Trust. He put his assets into the Trust she started, adding his Beneficiaries. This small Trust blossomed. New Trustees were added.

After his assets were contributed to the corpus of the Trust and the extensive Trust documents completed, Mary signed a contract with a company in another state. This caused the situs of the Trust to move. Luckily, there was a person in that state, close to where she located, who could be one of the two Trustees. The bank accounts needed to be changed to the new state.

One of the Trustees handled the Trust Administration, but being in a different state had limited ability to keep track of the details. Not organized enough to keep her papers straight, she kept what confused her in the original envelopes--somewhere. Financial information was packed in various boxes -- anywhere. In this new environment, these lovers were hopelessly lost. They also had checks piling up under the names of the Trust and could not deposit them, as the new bank account had not been set up.

Unpacking completed, some Trust organization then took place. The first order of business was to get both Trustees to the new location. After their arrival, two days and twelve hours later, the accounting was put in order, and methods and procedures were in place to go forward to the next level of Trust business, and of course, open bank accounts.

### **Leadership**

The issue with Administration is leadership. Who in the Trust group is the strongest member? Who can set the tone and direction? It is most often the one who cares the most; sometimes, it is the one who is the most comfortable with deciding; at times, it is the one with the vision. If the Board of Trustees discovers all three qualities in one person, your Trust is lucky. Most of the time, though, the Trust lacks quality leadership for the following reasons:

1. The Trustees are too afraid to take a stand.
2. The Grantor may have a vision, but no leadership qualities.
3. The overall tone and direction of the Trust group is lacking because of inadequate communication.
4. The Beneficiaries are not involved, or squabble among themselves.
5. Overall dysfunction in the family.
6. The dominant, natural leader is shunned because others have “issues” with him or her.
7. The knowledge of how to lead is lacking.

To encourage a Trust leader to find his or her way to the top, he or she needs enough education and support by other members to become one of the decision makers. Frequent Trust meetings add notable force to getting members on the same page. Communication issues often get resolved, and methods worked out. Do not be shy about having meetings. Sometimes, there is a financial consideration. Since people need to be paid for their time, many issues remain unresolved. Hold meetings anyway. If funds are an issue, then postpone payment. If people are also Trust Certificate Holders, they should have no problem waiting until the Trust amasses enough funds for payment of services.

Should there remain problems with leadership, then call in advisers, counselors and experts to teach the Board members so the Trust can mature rapidly and benefit all members.

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There is a need for focus, yet with ample motivation, setting up a Trust is no more difficult than setting up any other business.



## Chapter 2: Dutiful Attention

**A**fter settling a Trust, the major focus becomes administration. It is always best to look before one leaps, so now is the time to become familiar with the skills and talents needed to handle a Trust. Getting a Trust turns the family into a business; conduct it as one. The product is the children; the goal is a better life for all involved. In this capacity, the Trust supports the Beneficiaries.

Of course, for tax purposes a Trust is a passthrough entity. Referring to a Trust as a business, other than within the context of this discussion, blurs the lines of legal definitions. Do not use the term “business” when filling out forms, use the term “Trust.”

Because the Trustees are in the business of managing assets for the Beneficiaries, the entire financial base needs careful planning, good documentation, and consistent performance.

Sometimes people do not take seriously the long-range effects of a Trust. As shown in Volume I, they create the documents, sign them and put them away until death settles the heirs. Perhaps, they use the would-be inheritance as a game, or a torture—changing Beneficiaries at will, keeping children at each other’s throats. Who ever conducts a business this way?

The positions of Executive Secretary and General Manager are ideal for family members. If there are no family members to fill these key positions, then choose those with the potential to become Trustees. With the myriad intricate tasks involved, these people learn quickly the important formats for conducting Trust business.

Based on the experience of fully trained Executive Secretaries, skill levels in the following areas need to belong to either one member or several members of the Board of Trustees. Further, the Executive Secretary, as an officer of the Trust, may have his or her assistant take care of the details listed.

In a particular Trust Organization, a Trustee’s talent base may make him or her more qualified to handle certain routines than can the Executive Secretary. Not all tasks listed here must belong to any one member. For convenience, they are included under the

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heading of "Executive Secretary." Think of the term "Executive Secretary" as a broad-based function rather than an individual.

Those serious about putting together a sophisticated financial setup to support the family long into the future need familiarity with the following job descriptions. These outline the expectations of those entrusted with the welfare of your legacy.

All of these responsibilities support a fully functioning Common-Law Trust. Although a Statutory Irrevocable Trust does not have an Executive Secretary and perhaps not a General Manager, the duties remain applicable to all Trusts. Even if there is only one Trustee to handle the myriad tasks, these are the responsibilities:

### **Executive Secretary**

#### **Skills**

The most important feature of the Executive Secretary is to have time to handle Trust documents properly. The Executive Secretary holds a key position. Without right documentation the Grantor may need to pay taxes, as there is no proof of a valid Trust.

The time needed to devote keeping the Trust records in order and attending meetings can be anywhere from three hours a month to a full-time job, depending on the Trust size. The less time needed to devote to the Trust, the more difficult it is to focus on it. Therefore, set aside time at least once a month. Lack of attention to documentation causes a log jam. When needed, there may not be enough time to get paperwork ready.

You need to type at least 40 words a minute.

If you are not savvy with writing Minutes, or you will not be the one who writes them, you may need to set the format and dictate the events that happened in the meeting to another who can type them. Also, a Trustee can take this responsibility, but the Executive Secretary ensures their completion. It takes focus to track a draft copy, incorporate changes, complete the Minutes and get signatures.

It is important to have a computer and be familiar with a word processing program. This means you know your way around the Internet as well as know how to load software. It helps to know how to connect a printer and to take care of miscellaneous small matters about computer interface.

On the Internet, you may need to research various legalities or to find investments as an aid to the Trustee.

You need writing skills. You may not be able to write lengthy legal reports, but you need to be able to write a letter. With practice, the skill increases to write more complex information for the Trust.

Business experience is necessary but not an absolute. If other members of the Trust group are willing to teach the Executive Secretary, then minimal business experience of a couple of years is enough. Because of the responsibilities inherent in this position, the more experience, the better. Improper handling of Trust documents can lead to legal and financial complications.

Familiarity with at least two or three different kinds of businesses is helpful. Trust documents apply to many applications. The Executive Secretary gets involved in mail services, including shipping and receiving, business contracts and sometimes accounting. He or she may interface with counties about transferring, buying and selling property, plus handling getting contracts completed, to mention only a few.

### **Documents**

There will be a need to create original documents. This is not the Executive Secretary's responsibility, but he or she often needs to find resources. This applies to buying legal software at office supply stores or on the Internet, or finding free documents, often available on the Internet. All acquired documents need editing to Trust specifications. Most documents are applicable to partnerships, corporations, LLCs and sole proprietorships. Therefore, it often becomes necessary to make critical changes to relieve any improper tax status that causes an undue tax burden to the Trust, or to the Grantor.

The documents created need to be clear to withstand scrutiny and to be in alignment with accepted legal principles. Remember, the duty of opposing attorneys is to find fault, to destroy your organization, to ensure that their side wins. There is no reason to give them any opportunities. "The devil is in the details," an old saying goes. Let them have a devil of a time finding fault in your paperwork.

Sometimes certification of documents is necessary when seen by financial institutions, or government agencies. Create a certification stamp for the Trust Executive Secretary. It needs to have on it the Executive Secretary's name and the Trust name. So, if you take over from another Executive Secretary, the certification stamp needs to be recreated. Since it is the work of the Trustees that needs certification, an Executive Secretary must be part of the Common-Law Trust administration. The Trustees cannot certify themselves.

The same need for certification exists in Statutory Trusts. There is an effort to resolve it by using a Notary. This becomes awkward, for how would a Notary be able to authenticate Trust documents he or she did not create or maintain? Further, a Notary is not privy to the inner workings of a Trust, and is not familiar with the Trustee's duties.

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The documents most often needed to transact business are in the original Trust book and always remains in the Trust Book.<sup>8</sup> This list applies to both Common-Law Trusts and Statutory Trusts:

1. First and last page of the Trust Indenture
2. Trustee Acceptances and Resignations.
3. Banking Minutes or Documents
4. Investment Minutes
5. Certification of Trust
6. IRS original notification of the Employer Identification Number (E.I.N.)

Use of these documents is covered in later chapters.

Recreate Banking, Investment Minutes and Certification of Trust when there are bank signature changes since they need current dates and signatures. Create Trustee Acceptances and Resignations only when a change of Trustee occurs.

The Executive Secretary is responsible to send and receive documents. Even if addressed to the Trustees, you need to know the paperwork's whereabouts. Only send original documents if they need Trustee signatures, otherwise always send copies with certification to third parties.

The Executive Secretary needs to always needs to know where Minutes and other documents are in the signing process. Complications arise when Trustees live at a distance, and contact is by mail.

Document location is important. Not only does the Executive Secretary need to know where they are filed, but so do other Trust Officers. Keep original documents integral to the Trust in the Trust book; other documents can be filed in a filing cabinet.

Because the Executive Secretary position is often filled after the original Trust Books are created, follow formats for standard documents as originally set up.

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<sup>8</sup> Samples of all of these documents, except for Item 1, are found in the Appendix.

### **Trustee Changes**

The Executive Secretary is responsible to create the Resignations<sup>9</sup> for Trustees, and this includes all the Holding Trusts. You need to create the Acceptance of Trust<sup>10</sup> for new Trustees, Fee Agreements, new Banking Minutes and a Certification of Trust.<sup>11</sup>

### **Meetings**

The Executive Secretary needs to be sure that meetings happen. There should be no less than two meetings a year. Because a Board of Trustees Meeting offers an intense learning experience, and gets all members of the Board on the same page, it is preferable to have at least three meetings a year.

The Executive Secretary takes responsibility for setting the date and gathering the subjects for the draft agenda. It is then sent to the Trustees, the Grantor and other people who take part in the Board of Trustees' meeting. Ideally, the Executive Secretary calls members to make sure the meeting date is set by agreement and they can attend after it is set. There is a phone call or e-mail to get an approximate date and a phone call or e-mail closer to the meeting to ensure all invited will be present.

If the meeting is by telephone, there may need to be a telephone relay to know who calls whom.

If people travel to the meeting, the considerations for traffic and providing directions are the Executive Secretary's responsibility. If people come from out of town, make hotel and motel reservations. The Trust pays for this expense.

### **Correspondence**

Often, the Trustees become less involved in the Trust than the Executive Secretary, and therefore correspondence becomes more your responsibility than theirs. Most of the time Trustees sign the letters. Correspondence can occur by e-mail, fax and letter. If correspondence is by e-mail, be sure to get a printout of significant information for the file for future reference.

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<sup>9</sup> See Appendix C, Sample Format 15 and 16 for resignation documents.

<sup>10</sup> See Appendix C, Sample Format 13 for Acceptance of Trust.

<sup>11</sup> See Appendix F for Banking and Certification documents.

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### **Year-End Updates**

The Executive Secretary works with the Trustees to ensure that all Trusts have at least one minute every year. Because many details are often overlooked in the haste of doing business, the Executive Secretary audits all Trust books once a year to make sure they are complete. This means going through the Trust books to make sure signatures and documents are in place. There may be a few Trust books, or in some larger and older Trusts, there may be hundreds. If properly kept, these become a rich source of family history.

### **Legal**

The Executive Secretary is not responsible for the legal matters of the Trust. Yet, because he or she is involved in Board of Trustee meetings, there is a need to be aware of legal issues. Involvement with legal documents is likely, especially contracts that need to be created, typed and updated. Independent and Private Contracts have an end date. When they expire, the Board of Trustees needs notice should the contracts require renegotiation.

File legal documents in their proper place. Photocopying is the responsibility of the Executive Secretary.

There are many issues that may come up involving current and past matters. The Executive Secretary may or may not get involved at this level.

Although thoroughly the domain of the Trustees, one of the greatest responsibilities that often falls on the Executive Secretary is getting signatures on an Oath of Privacy or some other nondisclosure document relevant to Trust matters. All Trustees, the Grantor and others involved in setting up the Trust sign the original copy when the Trust begins. People later introduced to the Trust functions and paperwork need to sign a privacy document. All Beneficiaries who attend a Board of Trustees meeting must sign it. The Oath of Privacy or other document used carries severe fines for violation. This discourages the chatty. For practice, Board members need to correct one another when too much information is shared when nontrust members are present.

### **Financial**

Although this realm belongs to the Trustees, when accountants do not remember to create the monthly, quarterly or year-end financials, it will often be the Executive Secretary who notices. These documents must also be attached to the agenda at Board of Trustees meeting, and be available in their most current form for review by them when needed.

Financial correspondence is chiefly the responsibility of the Trustees and accountants, but the Executive Secretary needs to be aware of current issues and be able to find relevant documents.

There is a large issue about the signature powers at banks, brokerage firms and other financial institutions. The Executive Secretary needs to have the proper documentation ready and know who signs what and where. For example, if there are three Trustees, two of them may sign at one bank, but two different ones may sign on the Trust's brokerage firm account.

### **Interface with Beneficiaries**

The Executive Secretary is involved in correspondence with Beneficiaries, and if Beneficiaries attend the Board of Trustees meeting, the Executive Secretary is the one who usually handles the contact.

The Executive Secretary needs to be sure all Asset Holding Trust<sup>12</sup> documents are in alignment and the right Beneficiaries are on the right Trusts.

### **Trust Capital Units<sup>13</sup>**

The Executive Secretary is the one who should create the Certificates of Trust Capital Units and keep the Trust Capital Unit Register updated. Although the Trustees may handle this, it is usually the Executive Secretary who adds, subtracts and issues Certificates.

### **The General Manager**

All these listed duties can be handled by a General Manager. If the Executive Secretary handles most of these tasks, then the General Manager's role is suitable to his or her capacities and unique contributions to the Trust group.

One of the most valuable contributions to the Trust Group the General Manager often makes, is research into various ways to bring in a strong cash flow for the Beneficiaries. When this responsibility becomes a central focus, it easily takes up to 30 hours a week. These duties include Internet research of possible income producing opportunities. Some of the common ways a Trust makes money is through business partnerships in any of a wide variety of enterprises. Also, common investments such as mutual funds and stock portfolios sometimes prove to be profitable. Promissory notes often produce a cash flow. With a creative General Manager, the sources of cash flow become unlimited.

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<sup>12</sup> Also referred to as a Subtrust or a Unit Trust in other Trust systems.

<sup>13</sup> See Appendix K for sample formats of registers and Certificates.



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The most common and accepted income, though, is from rental properties or buying and reselling property. Involved in this area of the Trust business, the General Manager often spends time visiting sites, reviewing leases and handling the various issues and problems that arise. It is easy to see why those responsibilities listed for the Executive Secretary should not be an overall concern of an active General Manager.

The General Manager often reviews financial reports. Since he or she contributes to a strong cash flow, it is important to have available funds for more investments. If the cash flow is slow, then investments are postponed until more funds become available. The Board of Trustees needs to determine to what extent the General Manager can commit Trust funds. This depends on whether the General Manager is also the Settlor. In this case, there need to be lower limits on his or her authority to ensure there can be no question the General Manager is not in control of the Trust.

The limit on discretionary power to spend is set forth in the Minutes.

In one established Trust, the General Manager had authority up to \$100,000.00 because of the average amount of transactions happening on a daily basis. Once contract, obligations or other business decisions required a greater commitment, it not only took another Trustee to agree, but it took all three of them to sign documents, and the General Manager could only advise.

In smaller Trusts, a limit of \$1,000.00 to \$5,000.00 is common.

### **Trustees**

The Indenture has an extensive list of Trustee responsibilities. While the General Manager may bird-dog investments, it is the Trustees who make the deals. Their signatures are on all paperwork to prove Trust ownership.

Trustees handle legal matters from contracts to court appearances, whether they hire a lawyer or not. The Trustees handle any complications, first through meetings and correspondence, then, with the Protector, via mediation or arbitration before taking action involving the courts.

All banking documentation, opening and closing bank accounts, getting loans and any matters that involve the transfer of funds from one account to another, or from one entity to another are the responsibility of the Trustees.

Trustees handle all tax and licensing matters. They need to get the city, state or county paperwork and fill it out for the correct business licenses or resale permits if these apply to the Trust.

Further, the Trustees hire and terminate all other members of the Trust Group. A Trustee can resign, but if he or she needs to be terminated, then the Trust Protector

becomes involved. We have devoted an entire chapter to the Trust Protector, so we will not cover that information here.

### **Trustee Qualifications**

Although we addressed some of the Trustee qualifications in Volume I, here is more information.

Because the first Trustees hired may be friends of the Grantor, they may or may not have the needed qualifications when they initially accept the responsibilities. As the new Trustees perform their duties, they naturally gain accounting knowledge and get a smattering of legal information. Trustees who do not gain experience, though, in time become “dummy” Trustees, and become inadequate to the task. Because of distractions from other commitments, even professionals may fail to get enough involved. As the Trust grows, the Trustees need to grow. They endanger the assets and Beneficiaries because of their lack of follow up and interest. If Trustees have not gained control or moved the Trust forward, the Beneficiaries can demand an immediate payout of the total assets in the Trust. If there is no functioning Trust, there is no Trust.

Trustees who fail to rise to the inherent challenges of Trust administration should resign. If they do not volunteer to leave, then the Protector resolves the issue.

Because of the legal complications resulting from inaction, remove Trustees for incompetence before the Trust achieves significant financial status. In a Statutory Trust, George Bogert,<sup>14</sup> a leading Trust expert has said:

Before the court will order removal, some cause usually must be shown why the trustee ought to be removed. The court will not interfere unless some beneficial end is thereby to be achieved. In some cases it has been said that it is beyond the court's jurisdiction to do so.

It is more likely there is no necessity to remove a Trustee, but to hire one to aid with Trust management as the assets have grown and need more expertise to manage them. What may initially appear as incompetence, may be simply the Trustee is over his or her head.

Over time, a Trustee grows into the position. The following list of qualifications is a guideline for hiring a new Trustee. Those considered competent have 70% to 80% of the these characteristics. We have divided them into two categories:

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<sup>14</sup> George Gleason Bogert, *The Law of Trusts and Trustees, Revised 2<sup>nd</sup> Edition*, Sections 511-550, St. Paul, Minn., West Publishing (1993), pg. 48.

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- Trustees without previous experience
  - Minimum education: High school graduate or self-educated, enough to be convincing of his or her abilities.
  - 30 years old or older. Those younger usually do not have enough experience in life to handle complex decisions.
  - Communication ability:
    - Have good language skills, enough to create letters and write reports.
    - Have a computer: With today's technology it is a necessity to be up-to-date with other Trust members.
      - Internet savvy: This is necessary for research and to get relevant and information.
      - E-mail correspondence. In a fully functioning Trust, keeping in touch with the Trust group is imperative.
      - Scanning capacity. Both to send and receive Trust documents, this is most often the best way.
      - Have a fax machine or ready access to one. This is important when documents need to be signed quickly and returned.
  - A minimum of two years bookkeeping or accounting experience. This is an ideal. If there is no bookkeeping background, then a willingness to learn is important. Any resistance on this subject proves detrimental to the Trust. The Trustee is not required to do the accounting, but needs to have a grasp of procedures this includes reading an income and balance sheet..
  - Needs to be able to read financial reports, or be willing to learn.
  - Not intimidated by legalities. Curiosity to learn is a healthy sign of a good Trustee. Most people are afraid of courts and confrontation, but some will be willing to take on the challenges. With enough support, legal issues are handled easily. Few Trusts become embroiled in controversy.
  - A minimum of five years business experience. This proves to be one of the most significant factors. The more knowledgeable, the more

## CHAPTER 2

valuable. This one factor improves the odds for older people who become Trustees.

- Familiar with or involved with investments. This is nearly a must. If the Trustees do not have experience in this area, then the Grantor should. Connections in the financial world prove to be one of the most powerful allies of the cash flow, and thus provide distribution to Beneficiaries.
- Availability
  - Preferably not locked into a 9 to 5 job. Trustees need to have flexibility. The Trust cannot be a “stepchild.” It must rank high on the Trustees' list of priorities.
  - Limited travel. Being frequently out of town does not help Trust matters. Although travel is part of most people's lives, those who are hardly available cannot be Trustees. If one Trustee is out of town, then the other one must be near the Trust location.
- Have read books about Trusts, or have some familiarity with them. This educational requirement should be constant. An informed Trustee, is a better Trustee.
- Excellent credit rating. At least one Trustee needs to have this qualification. The use of a credit card for the Trust is imperative. Under the Trustee's personal name, and assigned to the Trust improves the Trustee's credit rating. Since the Trustees are in control of the finances, payment of the card is not a problem. Before activating the credit card for the Trust, create Minutes so the Trust takes responsibility for the card. This card is only used for the Trust. No personal purchases can appear on the card by any members of the group.
- No political affiliations that cause undue attention to the Trust assets. Nothing can get a Trust into trouble faster than politics. The Grantor may get him or herself involved in protests and marches, but not the Trustees. There can be no connection between the political stand of any members of the Trust and the Trust itself. This means there can be no financial connections regarding unpopular issues, and the Trustees cannot show up at rallies.

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- Trustees with previous experience
  - Familiar with or have connections to various investment opportunities. This can be one of the most significant gains for a Trust.
  - 35 years old or older. The emphasis needs to be on older. As long as the people are alert, they are to the advantage of the Trust group.
  - Minimum three years Trustee experience. This is helpful, even if the experience is with a Living Trust. Working with a Living Trust, should give the potential Trustee an idea of the difference between what is part of Trust corpus and what is not in a Trust, as well as the difference between a Trust account and a personal account.
  - Familiar with legal cases involving Trusts. All experiences of this nature are excellent
    - Dealing with lawyers. Consider this an art form. Many have negative experiences in this realm which makes such Trustees even more savvy.
    - Have been in a courtroom. Even if all they did is sit and watch, or as clients sat next to their lawyer, this exposure is an advantage.
  - Is familiar with financial institutions: Often a Trustee needs to interface with banks and bankers. This is because of large transactions, wire transfers, and the need to set up different accounts. For Trusts handling a significant cash flow, there may be Certificates of Deposit, Money Market Accounts, as well as two or three checking accounts.
    - Opening and closing bank accounts. Depending on the Trust, opening a bank account is a skill. The larger the initial deposit, the easier it is.
    - Opening and closing financial accounts. Most large financial institutions are familiar with Trusts of all kinds. Although complicated, involving many forms and information, accounts can be opened.
    - Handling
      - Loans: Trustees can make secured loans if the assets are large enough.

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- Mortgages: It is essential that Trustees have established a good credit rating; , otherwise, getting mortgages is difficult.
- Investments: Some financial institutions will not open an account unless one of the Trustees can prove he or she has dealt with investments.
- Beneficial Disbursement. This is an area where most people have little experience. Although the Grantor may hold this responsibility, the Trustees are the ones who sign the checks.
  - Manage disbursements to various Beneficiaries. Unless the disbursement is a routine set amount, create Minutes stating the reasons for the disbursement, and how much of the funds received are to be given out. When other Trusts are involved in receiving money, complicated formulas may be appropriate. Also, some of those receiving funds may not want to take them, or want them given to others.
  - Understands K-1s<sup>15</sup> and 1041s. This is learned through on-the-job training, unless the person has a strong accounting background. It is common to use a professional in this realm.

The remaining qualifications are the same as they are for a Trustee without experience.

Installing a new Trustee is different from when the Grantor chooses the First Trustee. Because this chapter focuses on the duties and responsibilities of each Officer, we will not go into the formal hiring procedures for a new Trustee now.

This should give you enough information to feel confident regarding who should be a Trustee and expectations about the performance of all the Trust Officers.

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<sup>15</sup>

A K-1 is the form filled out by the Trust on which funds passed to Exchangers and Beneficiaries are reported to the IRS.

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## Chapter 3: Puzzles and More

**B**efore you embark on the adventure of tackling inheritance issues, be sure you have enough space in your life to devote to the details. Do not attempt this journey if you are in the middle of buying or selling a home, moving, getting married or divorced, legal complications or any other project to which you must devote focused concentration.

Putting a Trust together often takes more time than expected. Doing it right may involve several trips to the lawyer, or other professional. A simple Will is not likely to take as much time. You can download one from the Internet and complete it over a couple of days. This chapter does not address the subjects of Wills or Living Trusts.

The unique complexity of most Irrevocable Trusts mandates special care and meticulous attention to detail. Since all Living Trusts become irrevocable once the Grantor passes, we again suggest that you set up a Living Trust using Irrevocable Trust principles.

### Putting the Pieces Together

Although we have gone over the duties of the various positions in the Trust, we have not outlined responsibilities of each participant to put together a Trust.

#### Grantor

The Grantor is responsible for setting the rules of his or her Trust. Meeting with suitable counselors, he or she writes the Indenture, usually by editing a generic draft, thus streamlining it to his or her family's benefit. To bring a Trust into being, he or she must personally display intent to charge the Trustee(s) with duties enforceable in court.<sup>16</sup>

As Grantor, you receive at least one percent of the Trust Capital Units (TCU) for starting the Common-Law Trust, and as the estate grows and the TCUs split, you

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<sup>16</sup> *Ponzelino v. Ponzelino*, S. Ct. 228 Iowa 201, 26 N.W. 2d 330 (1947).



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receive more Trust Capital Units. There is usually no such equivalent provision in a Statutory Trust.

You also place into the Trust the initial corpus to become an Exchanger and receive more TCUs.<sup>17</sup> Any earnings from the exchanged asset(s) are no longer taxable to you except when you cash out the TCUs. There is a strong possibility that you may never do this, as it may be a taxable event. You may also pass on your TCUs to your Beneficiaries.

The Grantor of a Statutory Trust transfers the assets into the Trust. Taxes may apply.

As outlined in Volume I, Grantors may retain significant control within the Trust, although the Trustees own the assets. The Grantor can decide whether to treat revenues as income or corpus and when or whether to distribute to the Beneficiaries.<sup>18</sup> This provision is uncommon in Statutory Trusts. We believe this is because the information has been obscured.

### Exchanger

This section does **not** apply to Statutory Trusts.

Anyone placing assets into a Trust in return for TCUs becomes an Exchanger. The most common reasons for becoming an Exchanger are to provide financial security for children, aged parents or others and preserving assets for future generations. The Trustees may allow Exchangers to keep use of the property in exchange for services to the Trust. Since all Trustees have TCUs, and thus a stake in the Trust, anyone who exchanges personal assets to add to the Trust will find motivated allies to help build a strong financial base.

Often, grandparents join in to add assets to the corpus to ensure the growth of the Trust for the grandchildren. Brothers and sisters may also decide to join this group endeavor by adding separate Trusts under the management organization. We handle Trust interface in a later chapter.

Over time a Trust may have a long list of Exchangers, and some TCUs may be exchanged into other Trusts.

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<sup>17</sup> See Appendix H for exchanges into Trust.

<sup>18</sup> *IRC §674.*

Trust Certificates<sup>19</sup> received in exchange for property have no fair market value until sold. Therefore, they do not represent taxable gain to the recipient.<sup>20</sup> Further, even bad bargains in a genuine business transaction do not result in taxable gifts. For example, the exchange of valuable stock into a Trust for TCUs which have no set value.<sup>21</sup>

Do not worry. The IRS will honor your Trust Indenture and respect the transfer of ownership of the property. Although you may need to prove substance of transaction, in Section 671 of the IRC your legal position is addressed directly and clearly:

No items of a Trust shall be included in computing the taxable income and credit of the Grantor or of any other person solely on the grounds of his dominion and control over the Trust under Section 61, or any other provisions of this title, except as specified in this subpart.

Note. Handling the Trust funds is the taxable issue, not the “dominion and control” over them. If the Grantor diverts the money of the Trust to personal use, the Grantor risks having the Trust annulled since the Trust funds must be separate from his or her own. The Trust is a separate legal entity. Funds received from the Trust by the Grantor may be taxable.

### **Manager and General Manager**

The first Exchanger experienced in running the business or handling the property of the Trust, sometimes becomes the General Manager, who acts as an adviser to the Board of Trustees. In larger Trusts, he or she may even have subordinate managers. Management positions could be created for other Exchangers, but usually not.

If the Grantor has become a General Manager, responsibilities can be broad or narrow depending on the needs of the Trust and Trustee involvement. However, we recommend

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<sup>19</sup> See Appendix J Presentation I - Goldwater v. Oltman for the first California court case involving a Common-Law Trust and its Certificates.

<sup>20</sup> *Burnet, Commissioner of Internal Revenue v. Logan* 283 U.S. 404 (1931)

<sup>21</sup> “Even bad bargains in a genuine business transaction are held not to result in taxable gifts. Where value of stock was in excess of the consideration, the transfers were made in the ordinary course of business and are not subject to gift tax.” Attorney Jaworski (later special prosecutor in Watergate) argued this case against the IRS – *Estate of Anderson v. C.I.R.*, 8 T.C. 706 (1947).

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the Trustees take over more responsibility as the Trust matures. The main objective of the Grantor is to retire, so he or she needs to train others to take over daily duties.

Some Grantors are incapable of managing, and should not become involved.

### ***Executive Secretary***

The Executive Secretary handles Minutes, the Trust Certificate Register, Trust Certificates.

### **Trust Protector**

Chosen at the beginning of the Trust to work for the Grantor only, the Trust Protector guards the Trust by watching the Trustees. With the power to fire a Trustee for cause, he automatically becomes a counselor and mediator. Although not involved in the early setup procedures, the paperwork in the original Trust documents appoints him or her. The use of a Protector is more likely within the Common-Law Trust, but can apply to an Irrevocable Statutory Trust. See Chapter 11 for details.

### **Legal and Financial Advisers**

Advisers are optional. There is no legal requirement, other than it is good to speak with others to get an understanding of complexities and to get different points of view.

These are the people with the potential to become a Protector or a Trustee. Given the general education of this specialized topic, finding legal and financial counselors who both understand and support the use of trusts, in general, may be difficult.

The counsel you receive from people in these positions may be important to the success of this venture: it can save your bacon or cost you your shirt, risking an otherwise “bulletproof” Trust. To rely on an uninformed professional, despite credentials and assurances of loyalty about the specialized area of Trusts, is dangerous. Seek empathetic, knowledgeable counselors to advise you.

Sometimes, a Grantor’s own doubts reflect in the advisers. If you want your advisers to learn about Irrevocable Trusts, or any other specific subject, research the matter yourself. Then, you can speak with assurance when you insist on their performance. The negative attitude will most likely disappear. If it does not, at least you know it is coming from the advisers, not you. In Grantor-adviser relations, we discourage the need for review of every action by a professional. If you are so uncertain, use a Statutory Trust. A Common-Law Trust is not for everyone.

Your advisers must, of course, have a good working knowledge of their own areas of expertise. They should be able to prove this not just by academic degrees but by results with other clients. Get references and check them.

Once selected and retained, professional advisers commit themselves to protect your assets. You may want to issue TCUs or Units of Beneficial Interest (UBIs) to them. For more information on this subject see Chapter 9, Distribution.

## First Steps to Creating Your Trust

### Gathering the Elements

We have talked about the history and advantages of the Irrevocable Common-law Trust. Now, let us recap, so you can see how the Trust *you* create comes together.

To set up an Irrevocable Trust, several details become necessary. These four participants are key: Grantor, two Trustees, at least one Beneficiary. The Protector is optional. We strongly suggest his or her inclusion at the beginning of the Trust. This provides the Grantor with peace of mind. The participants and needed objectives decide the type, format and number of Trusts needed. If you have no relatives or associates who wish to take part as Trustees or Protector, the Trust management company you choose may have people to fill these positions until you feel confident about replacing them.

Title	Duties, responsibility, roles
Grantor	<p>Creates Trust contract and chooses the name. To keep the family history intact, use a family name. A combination of the grandparents' names can give roots to the family history. For example the Grantor's mother's birth last name is Karena and his wife's mother's birth last name is Polenter. The Trust name might be the Karena Polenter Trust.</p> <p>The Grantor is the initial Exchanger and fixes Trust goals, purposes and priorities. He or she then appoints the first Trustee, and names Beneficiaries to hold Trust Certificates.</p> <p>For a Statutory Trust, the Grantor names the Beneficiaries and sets the distribution percentages.</p>
Trustees	<p>Manage assets, protect Beneficiaries and, most important, see that assets or funds multiply and passthrough to Beneficiaries. Further, Trustees are responsible for faithful implementation of the Trust Indenture.</p>

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Title	Duties, responsibility, roles
Beneficiaries	<p>People for whose benefit the Trust is created and for whom courts of law uphold properly set up and managed Trusts. Beneficiaries receive a percentage of earnings and assets of the estate and have not contributed to the Trust set up.</p> <p>For the Private Trust, this is about Trust Capital Units. Named on the Trust Certificate Register as Beneficiaries instead of Exchangers.</p> <p>In the Statutory Trust, Beneficiaries are named and the percentage is set in the Trust Indenture.</p>
Exchangers	<p>Anyone who places assets into the Trust. The Initial Exchanger is usually the Grantor. Exchangers can be anyone who accepts an invitation from Board of Trustees.</p> <p>In a Statutory Trust, gifts given to the Trust for the Beneficiaries, and assets added may carry tax consequences.</p>
Protector	<p>Responsible to Beneficiaries to oversee Trustees' actions and ensure strict adherence to the Indenture. Empowered by the Indenture to mediate between Beneficiary and Trustee and correct, sue or replace Trustees who fail to perform their duties.</p>

## Checklist

The following checklist may help you understand the fundamental steps to put together any Irrevocable Trust. It is not all-inclusive, but we give it here to set down a guideline and to stimulate your thinking. Although the steps are numbered, you may choose to do some at the same time, for example, Step 2 and 9 may be executed in tandem. For those only interested in a Statutory Trust set up, replace the term Exchanger with Transferee, and omit references to Trust Capital Units or Trust Certificates.

Step	Instructions	Responsible
1	Research and study to determine what Trust type is suitable for your family.	Grantor

Step	Instructions	Responsible
2	<p>Create, write, edit a Trust Indenture so it applies to your particular circumstances. This is where inheritance issues appear. If your children do not have children, who then inherits the TCUs? How are assets passed on?</p> <p>In a Statutory Trust, the succession of inheritance generally goes first to your children. Should they not survive or not have children, the succession often goes to the children of siblings.</p>	Grantor
3	Select the First Trustee. Please refer to the list of qualifications found in Chapter 2	Grantor
4	Name Beneficiaries. The first choice consists of blood relations and adopted children. Stay within the family boundaries naming at least one person. For the Private Trust, if the Grantor needs to go outside the family, choose cooperative people sympathetic and appreciative of their newfound benefits. Nonblood relationships usually cannot pass on their TCUs. Look at Beneficiaries as assets to secure the future, and guardians of the Trust. They are the first people to sound the alarm if something goes wrong with the cash flow.	Grantor
5	Select the Cotrustee, and other officers to support the Board of Trustees. Although hired by the First Trustee, it is best these first officers have the blessing of the Grantor. Discuss Trustee fees.	Grantor and First Trustee
6	Before creating final drafts of documents, tell others of the positions selected for them, and their responsibilities. Be sure they are willing to join in. Have meetings with them, explain the benefits and the risks.	Grantor and First Trustee
7	Make sure that all officers receive plenty of educational materials.	Grantor and First Trustee

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Step	Instructions	Responsible
8	Make a list of the names, title, addresses, including e-mail, phone numbers, etc., of all of those involved with the Trust. This includes Trustees, Beneficiaries, advisers, Successor Trustees and Managers.	Grantor and First Trustee
9	Create asset schedules or lists of all items exchanged into the Trust. These should be goods and accounts that appreciate over time, or are of intrinsic value to the family. Property might include: insurance policies, vehicles, financial and investment accounts, collectibles, art objects, jewelry, real property, investment accounts, patent, copyright, service mark or trademark documents; large business equipment.	Grantor, Exchangers with support of Trustees
10	Watch progress of third-party Trust Indenture creation. Review its contents periodically.	Grantor
11	Once the Trust Indenture, inventory and asset schedules, lists and Trust Certificates are complete and signed, hold the first Board of Trustees meeting. Familiarize all participants with the documents and the Grantor's strategies. Delegate responsibilities to open bank accounts, register and record transfer of ownership of properties placed in Trust, and tell Beneficiaries of their status.	Trustees
12	For a minimum of six months, hold monthly Board of Trustees meetings. This solidly sets up plans for Trust administration should a sudden change happen, say, in the economy or the Grantor's health. The current status of any investments and major financial decisions needs review, as well as contracts or other agreements. Knowing the status of any leases or other long-term commitments helps the Board members keep up on Trust events as well as current and future matters about Beneficiaries.	First Trustee

### Trust Book Sections

Once decided, the Trust, in the form of a three-ring binder, comes into existence. Below is an outline of the documents most likely included in the original Trust, and suggestions for how to use the Sections. A Statutory Trust does not have a Certificate Register, Minutes and Exchangers. All other sections may apply to a Statutory Trust.

Name	Contents	Notes
Trust Indenture	Between twenty and thirty pages	The more details the better.
Initial Corpus	A schedule of original assets put into the Trust. The list includes stock certificates, promissory notes, cash belonging only to this particular Trust. The total fair market value of the original funds and other assets to start the Trust settles the value of the original corpus.	The value of the total initial corpus sets up the accounting baseline—the demarcation line between income and corpus.  See Appendix B, Sample Format 6 Initial Funding
Trustee Acceptances, Resignations	The Trust Indenture may have the signature of the First Trustee. This section contains the formal acceptances of the Cotrustee and Protector together with any fee agreements. These acceptances may include a description of duties. These are stand-alone documents which provide proof the Trustee is legally empowered to act.	Make a Trustee lineage. List the date, who hired the Trustee and the name of the new Trustee. Leave a column for the date of resignation. As the Trust matures, this list may become lengthy.  See Appendix C, F Acceptances and Resignations
Minutes	Document major decisions about Beneficiaries, Certificates, buying and selling of assets, and disputes.	The Resolutions are the legal details of the Trust; they prove substance of transaction. That is, the Trust performs as a Trust.



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Name	Contents	Notes
Family History, General Manager Reports, and Reports to Trustees	Build a solid history of the family for future generations. Imagine your grandchildren reading this long after you are gone. What is it they need to know?	Kept in vaults, the history of royal and/or dynastic families provides information about the true motives of current politics. They use this knowledge to preserve their power base.
Financial documentation and Asset Registers	Original receipts for significant assets. Keep assets listed on the schedule of initial funding with the original schedule. Keep assets bought by the Trust here.	This paperwork can be the key to keep the Trust intact. The general rule is to keep enduring asset paperwork in the Trust book. Those agreements and documents that expire within a few years, can be kept outside the Trust book. It is a decision the Trustees need to make.
Legal	Contracts, agreements, joint property separation, deeds and transfers.	Clear-cut agreements resolve major disputes. Get all agreements in writing. Do not continue without documented proof of commitments.
Asset Exchange or Transfer	Letters to the Board of Trustees to accept the gift, transfer, or exchange and Minutes accepting the goods into the Trust. Except for the TCU exchange, the Statutory Trust needs the same letters from transferees.	State motivation for putting assets into the Trust.
Information about privacy, how to handle government inquiries, etc.	Educational materials that current and later Trustees need to have.	This body of information continually grows. It eventually needs its own filing protocols as the Trust matures. For the diligent Trust Administrator, create an index.

Name	Contents	Notes
TCU Registers	Keep old asset registers when they have so many changes they need updating.	TCU registers need Trustee signatures. You may want to keep TCUs from other Trusts in this section.

Trust assembly is time-consuming and offers an incredible opportunity to bring the family together, to gain an education about family and asset management, and to walk into a new world where you create your own destiny.

It is worth the effort to do it right. Take your time.

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## Chapter 4: Building Blocks of the Future

**T**his chapter deals with two parts of Trust organization. The first is the relationship among the Trust officers and to the Protector. The second is deciding what Trust is responsible for what activity and its cash flow.

We provide several tables to help you correlate the people, duties and relationships and their respective Trusts. Refer often to these tables as we explain the foundational elements. Even those familiar with the layout presented need to go slowly through this chapter.

For simplicity, we use two Trustees.

We created one fictional family which operates through each of the Trusts we describe, and added a story about the members' lives to make this more interesting.

### Considerations

What takes the most time to put a Trust together is gathering all the necessary transfer paperwork and inventory. Sometimes, it can take a year or more to get everything ready to turn over to a Board of Trustees.

In that year, the average Grantor goes through many soul-searching considerations about whether to put assets in Trust, and what they should be. Doing so gives up all but limited control. Only the Grantor can continue the process. It is not unusual for people to get cold feet. Even though they have paid much money for a Trust, they walk away.

This section addresses how the various Trusts work together. After you get through feeling overwhelmed, a thorough study of this chapter contributes to your peace of mind should you decide to move forward.

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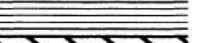



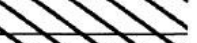





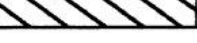





### **Unlimited Flexibility**

Through The Art of Passing the Buck, Volume I, you gained an understanding of what to put into a Trust, and transfers and exchanges. You also learned, who can be the Trustees and the role of the Protector. It is now time to grasp the techniques of structuring an administrative format. Understanding the basic flow pattern allows creativity and nearly unlimited flexibility.

### **Table A - Relationships**

To be sure you have the Trust Officers lined up correctly, though, we provide these tables to help you with their interrelationships. Refer to the relationship **Key** to understand the symbols.

Table of Relationships

	Trustee 1	Trustee 2	Beneficiaries	Protector
Grantor				
Trustee 1				
Trustee 2				
Protector				
Status	Person		Key	Relationship
Related	Spouse, mother, father, siblings, children			Cannot be related and cannot be an adverse party
Nonadverse party:	Spouse, mother, father, siblings, children, employers, or any other subordinate position to the Grantor			Can be related and subordinate
Adverse Party	In-laws, nonblood-related people, and relatives of a greater relationship than above described			Not applicable

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### Table B - Subordinates

The Board of Trustees, including the Executive Secretary and General Manager, hold a certain affiliation to one another. The same is true with the Protector. We have created the following table for reference.

Table of Subordinates				
Can Horizontal positions be subordinate to vertical positions?				
Subservient?	Trustee1	Trustee 2	Beneficiaries	Protector
Grantor	No	Yes	Yes	Yes
Trustee 1	N/A	Yes	Yes	No
Trustee 2	No	N/A	Yes	No
Protector	Yes	Yes	Yes	N/A
General Mgr.	No	Yes*	Yes	Yes
Exec. Sec.	No	Yes*	Yes	Yes

\* If the second Trustee is blood relation or an employee of the Grantor, he or she cannot assume the First Trustee position should the adverse Trustee leave, or the Grantor die.

### Family Matters

Before we lay out a Trust format, we need to create a fictional family, with some of its unique problems. We have even included a short description of each of them to make this example easier to follow.

We reference this family in future discussions.

**Table C - Allen Family**

	Mother, frail health: Corina		Father, Henry, travels	
George Allen, crew cut, Gambler	Joseph Allen (husband) Dark hair, glasses Owns ABC Machining		Sandra Jay Allen (wife) blonde hair, blue eyes Model, works part-time	
			Gretta Jay Long Brown Hair, artist, confused.	
Cassey Allen 10, athletic	Tammy, . 15, vain blonde	Rosie, red hair 13, shy	Carl, black hair, 9, silly	Peter, brown hair, 4, demand- ing

Joseph and Sandra Allen plan to set up a family Trust. They have four children, Tammy, Rosie, Carl and Peter. Joseph is concerned about his mother, Corina, whose health is failing, even though she is only forty-two. Sandra is worried about her sister, Gretta, who got into drugs, and has not yet put her life together.

George is Joseph's brother. He spent ten years in the Army, is ambitious but has a weakness for gambling and often takes trip to Las Vegas. His wife left him, leaving behind their daughter, Cassey. When Joseph told him about plans to create an Irrevocable Trust, George became interested.

### Selecting the Board of Trustees

Sandra Allen's cousin, Darren Portenkin, agreed to become the adverse Trustee. Joseph felt his brother's continual trips to Las Vegas disqualified him from being the Cotrustee. Because Sandra's father travels too much, he did not have the time to take part in the Family Trust. Joseph and Sandra decided on a common friend, Karen Rosencroft, as the Second Trustee.

The Protector would be the accountant, James Pennel. Because of his unique position, he would be the first notice unusual changes in the cash flow.

### The Skeleton

Table D is a Management Trust layout connecting the Trusts managed by it. The Trust names represent family members. For example Paula D. Smithers is Sandra Allen's grandmother. The Business Trust is the Smithers Family Trust. For Joseph to place his



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business into Trust, he became a partner with the Smithers Family Trust. He remains in control of the business, and the profits flow into the Family Trust.

Since it is too much of a risk to have two million dollars worth of machinery vulnerable, he places it into an Asset Holding Trust named after a favorite uncle, Saul M. Meyers. He realizes that not all the equipment should be in one Trust and later will ask the Board of Trustees to move the electrodischarge machine into another Trust.

Through a joint property agreement, explained in Chapter 17, Joseph and Sandra separated their assets. The home is in her name through a Quit Claim, and she places it into the Dawson Trust, named after her maternal grandmother.

**Table D - Management**

<u>Management Trust</u>	
<b>ALLEN-JAY FAMILY TRUST</b>	
Darren Portenkin, Trustee	
Karen Rosencroft, Trustee	
Checking accounts, investments, prom- issory notes, accounting and financial management	
	<u>Business Trust</u>
	<b>SMITHERS FAMILY TRUST</b>
	Allen-Jay Family Trust, Trustee
	Checking account, equipment leases, cash flow from partnership with ABC Machining
	Machine Equipment Loan payments
<u>Asset Holding Trusts</u>	
<b>DAWSON TRUST</b>	<b>S. M. MEYERS TRUST</b>
Residential Property	Large equipment
	-Electrodischarge Machines
	-Lathes
	-Mills
	-Grinders

All the Board of Trustees meetings for the Business and Asset Holding Trust takes place as part of the Management Trust, Allen-Jay Family Trust. All the accounting for all four Trusts happens through this Management Trust. The Allen-Jay Family Trust acts as the Trustee for those Trusts it manages and holds the majority of TCUs. Any

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distributions into this Management Trust, though, are redistributed per its own TCU register.

Refer to Table E - Cash Flow. Because the Smithers Family Trust is in partnership with ABC Machining, ABC Machining handles the daily accounts receivable and payable. The partnership is 40% ABC Machining, and 60% Smithers Family Trust.

The large equipment held in the S. M. Meyers Trust is leased to ABC Machining through the Business Trust. The Management Trust has delegated to Smithers Family Trust the responsibility of collecting the monthly lease payments and handling maintenance for the equipment in the S. M. Meyers Trust. The funds deposited into the Smithers Family Trust's checking account provide cash for investments, repayment of equipment loans and maintenance fees. Smithers Family Trust owes a monthly management fee based on a percentage of funds received from all sources. In this case, the partnership, lease payments and other investments.

The Allen-Jay Family Trust gets fiduciary fees, management fees, and investment income from its own sources. Should the residential property<sup>22</sup> be sold, the Allen-Jay Family Trust receives a Trust Capital Unit payout, and the Board of Trustees may decide to reinvest the funds.

Allen-Jay Family Trust pays the secretarial services and general management responsibilities. Also, legal, accounting and Protector responsibilities come through the Allen-Jay Family Trust. The Protector, though, is paid by the Grantor, should there be a dispute between the Protector and Trustees where the Grantor wishes one of the Trustees fired.

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<sup>22</sup>

See Appendix D, Sample Format 21 for Minutes about selling residential property.

**Table E - Cash Flow**

<b>Allen-Jay Family Trust Management</b>		<b>Smithers Family Trust Business</b>	
<b>Received</b>	<b>Paid</b>	<b>Received</b>	<b>Paid</b>
Investments	Fiduciary Fees	Equipment lease payments	Equipment loans
Business Trust Management Fees	Accounting services	Investments pay-outs	Equipment maintenance
Asset Holding Trust Annual Fees	Officer Fees, e.g., Executive Sec. and GM	ABC Machining Partnership	New equipment.
Distributions from other Trusts of profitable distribution	Property maintenance and repairs	Distribution, if any, from Allen-Jay Family Trust	Allen-Jay Management Fee
	Distribution to Beneficiaries		Annual Distribution

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### **Funding and Beneficiaries**

Using Table D - Management as the basis, we create Table F to show you how the funding and Beneficiaries appear on these Trusts. Joseph and Sandra separated their assets, and now individually add them to the Trust Corpus.

#### **Table F - Assets and Trust Capital Units**

Here, the Beneficiaries are different on each Trust. By including Joseph Allen's mother, Corinna, she receives added support from the Trust.

Management Trust

**ALLEN-JAY FAMILY TRUST**

Darren Portenkin, Trustee

Karen Rosencroft, Trustee

Promissory Notes, \$50,000 - Sandra Jay  
Allen (Settlor)

Oppenheimer Mutual Funds

\$200,000 - Joseph

Cash - \$30,000.00 - Sandra

Dain Rauscher Stock Account

\$500,000 - Sandra

Beneficiaries

Tammy 10 TCU

Rosie 10 TCU

Corinna 10 TCU

Beneficiaries

Tammy 10  
TCUs

Rosie 10  
TCUs

Carl 10 TCUs

Peter 10  
TCUs

Gretta Jay 8  
TCUs

Business Trust

**SMITHERS FAMILY TRUST**

Allen-Jay Family Trust, Trustee

IBM Stock - \$200,000 - Sandra

Jones Energy Partnership - \$500,000 -  
Sandra

ABC Machining Partnership - \$500,000  
- Joseph

Asset Holding Trusts

**DAWSON  
TRUST**

Residential  
Property

\$600,000 -  
Sandra

**S. M. MEYERS TRUST**

Large equipment

-Electrodischarge Ma-  
chine (1)

-Lathes (2)

-Mills (3)

-Precision Grinders (4)

Support equipment and  
small tools not listed.

\$2,125,000- Joseph

Carl 10 TCUs  
Rosie 10 TCUs

Peter 10 TCUs  
Tammy 10 TCUs

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TCUs do not need to be equal for all Beneficiaries. As the Trusts grow, give added TCUs based on performance or circumstances.

### Layering Trusts for Further Protection

The original Trusts can spin off smaller Trusts. In our example, shown on Table G, the large machinery in one Trust does not offer strong liability protection. Each type of equipment, because of its value, eventually needs its own Trust. Some of the machinery listed is owned by the S. M. Meyer Trust, and loan payments are due on other equipment. The Business Trust pays the loans from the lease payments received.

All four Trusts have different Beneficiaries. The Asset Holding Trusts can have two types of Units. Up to this point we focused on Trust Capital Units. There is a second category known as Units of Beneficial Interest. Like preferred and common stock, the Units are defined in the Trust Indentures. We explain Units of Beneficial Interest in later chapters.

Because George Allen, Joseph's brother, acting as Executive Secretary sees the effective financial management of assets, as time passes, he decides to get a Business Trust to ensure the welfare of his daughter. He adds it under the Allen-Jay Family Trust Board of Trustees, with another Asset Holding Trust he named Canton Jefferies. The Canton Jefferies Trust holds vacant land he bought several years ago. With this asset in Trust he cannot be tempted to gamble it away, and thus, he effectively curbs his darker proclivity of taking unnecessary risks when Lady Luck does not find favor with him.

Only you and your Trustees are the ones able to trace the connections among these Trusts. In fact, the natural evolution of a Trust often causes this to occur without making an effort to do so. Some readers may protest that this is not possible, yet even the IRS recognizes that any two Trusts are separate and distinct if they have different Grantors or Beneficiaries.<sup>23</sup>

### Expanding

We mentioned that George decides to get another Trust, so the following diagram adds his assets to the family group.

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<sup>23</sup> 33 *Am Jur 2d* ¶2617: Two or more trusts will be treated as one trust for purposes of the rules taxing trusts and their beneficiaries, if . . . same grantor and same beneficiary . . . purpose is to avoid income tax . . . husband and wife are treated as one grantor for purposes of this rule.

**Table G - More Trusts**

<u>Management Trust</u> <b>ALLEN-JAY FAMILY TRUST</b> Darren Portenkin, Trustee Karen Rosencroft, Trustee			
<u>Business Trust</u> <b>CRAIG LAWSON FAMILY TRUST</b> Allen-Jay Family Trust, Trustee Rental property and investments		<u>Business Trust</u> <b>SMITHERS FAMILY TRUST</b> Allen-Jay Family Trust, Trustee	
Cassey 10 TCUs Corinna 10 TCUs			
<b>Asset Holding Trusts</b>			
<b>Dawson Trust</b> Residential Property	<b>S.M. Meyers Trust</b> Large Equip- ment	<b>Canton Jefferies</b> Vacant Land	<b>Movian Allen</b> Electrodischarge Ma- chine
Cassey 10 TCUs			Peter 10 TCUs Carl 10 TCUs

Trust Capital Unit Holders as shown on Table F remain. We show only the additions on Table G.

Placing the Electrodischarge Machine in the Movian Allen Trust decreases the value of the S. M. Meyers Trust.

One motivation for a Grantor to create a Trust is to hold the right to place property into it in the future. For example, a young couple planning to buy a home and agreeing to place it into a Trust immediately on closing, would be wise to set up a Trust one to two years before the planned acquisition.



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### **Future Plans**

If you expect a sizable influx of money, you need to set up the Trust before receiving the funds. Getting overwhelmed when the money arrives often causes regrettable decisions later. Even having a Trust with minimum activity is more beneficial than no Trust at all.

### **Trustee Exchanges**

Trustees may exchange their own property into an Asset Holding Trust managed by the Management Trust. The Trustee remains the Trustee of his or her own property while their Cotrustee becomes the adverse Trustee. In Trusts where there are three or more Trustees, the other two Trustees often become the Trustees, leaving the third Trustee as the Grantor of the Trust. This is the better way to handle the new Trust.

### **Limited Resources**

If you have no major assets (house, car, boat, plane, etc.), a single Trust probably serves your needs. However, if you own such assets, you should create at least one Business or Management Trust and one or more Holding Trusts.

### **Unit Registers<sup>24</sup>**

The Trust Capital Units shown on these tables reflect only Beneficiaries. The complete Registers include the Trust Capital Units for the Grantor, Exchangers and Trust Officer. An explanation is in Chapter 9, Distribution. Units of Beneficial Interest are handled later.

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<sup>24</sup> See Appendix K for Unit Registers.

## Chapter 5: The Will, The Way and the Intent

**A** Declaration of Trust or any derivative or combination of terms using the word Indenture or Trust, changes the lives of many. Because of the long-term effects of decisions and actions resulting from setting up a Trust, take time to think carefully through the details, as well as consult with experienced people in this arena. In this chapter, we look at the multifaceted nature of an Irrevocable Trust Indenture. Besides the differences about Trust Capital Units in a Common-Law Trust, the other main departure between a Statutory and Common-Law Trust lies in the extensive tax considerations. These are often noted in a Statutory Trust Indenture.

In the following outline of a Trust Indenture, the focus is on the Trustees' responsibilities to the Beneficiaries, and the power of the Trustees. As we did in Volume I, we refer only to tax matters but do not provide a lengthy discourse nor any advice. This is not our focus.

This information provides a place of comparison for those interested in the Statutory Trust.

### Essential Elements of a Trust Indenture

The Trust Indenture is the key to a Trust. The more information, the less confusion, and clearer for Trustees to know what to do, and if a judge needs to decide elements of the Trust, it should be easy. You might wonder what involvement a judge might have in a Trust matter. There are sometimes disputes about the wording in the Indenture and intent of the Grantor. For example, the Hearst Family Trust Beneficiaries challenged the Trustees three different times.<sup>25</sup> Because Randolph Hearst's wishes are clear, the

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<sup>25</sup> *William R. Hearst, II v. Randolph A. Hearst, as cotrustee, etc. et al* (May 21, 1999, B1118323) [nonpub.opn.]; *William R. Hearst, II v. Randolph A. Hearst, as cotrustee, etc., et al* (Feb. 7, 200 B128171) [nonpub.opn]; *William R. Hearst II, et al v. Victor F. Ganzi as cotrustee* (Dec. 19,

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Beneficiaries failed in their attempts. This Trust serves as an example in this chapter about some standard elements of a Trust Indenture.

Suggested subjects to be included in all Trust Indentures:

- **The name of the Grantor, the name of the Trust, and the State:**
  - This is the situs's location. In a scam Trust, the Grantor may not be an interested party in the Trust. That is, he or she may be a stranger, contributing nothing to the Trust. Known as a "strawman Trust," it lacks Beneficiaries and a true motive for its existence.
  - In the real world, the Grantor is one who has genuine concern for the Beneficiaries, and the Beneficiaries have ties to the Grantor.
- **The Grantor must declare his or her intent for creating the Trust:**
  - By providing the cash flow of the Trust, he or she confirms the Trust. This act affects generations to come, and supports any other ambitions the Grantor has.
  - Setting up a Trust for tax purposes, merely opens the door for its dissolution in the future.<sup>26</sup> This fact came to light when the heir to the UPS fortune put his assets into an Irrevocable Trust. When he wanted a divorce, he also wanted to disband the Trust. Because the Indenture focused mainly on taxes, the Trust was dissolved.

In the Hearst Family Trust Indenture, the instructions to the Trustees needed them to make long-term investment decisions which might inure to the benefit of Remainder Beneficiaries at the expense of the current income Beneficiaries. This was to perpetuate the Hearst media empire. This was so clearly stated in the Hearst Family Trust documents, that challenges to how distributions were handled failed.
- **A longer list of purposes to set up a Trust may include:**
  - To provide liability protection, privacy, and asset protection from unwarranted creditors.
  - To prevent the dissipation of wealth

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2006, B184659) Daily Appellate Report 2006 DJDAR 16487.

<sup>26</sup> *Starkman v. Starkman* 2d Civil No. B178371 (Super. Ct. No. FL 03-1308) San Luis Obispo County, filed May 18, 2005

- To provide for and encourage wise stewardship of that which has before been entrusted by the Grantor to the Trustee
- **A No Contest Clause states that a Beneficiary who challenges a Trust can or will be disinherited:**
  - In California and probably in other states, the Beneficiary has a right for judicial review before lodging a complaint to see if his or her challenge violates the No Contest Clause.
  - In the Hearst Family Trust, the Beneficiaries complained that interest earned on their share was not enough and the Trustees should get them a better yield. Because Randolph Hearst plainly stated in the Trust Indenture the Trustees had discretion to perpetuate the media empire, this proposal did challenge the No Contest Clause. It would cause the Beneficiaries to be disinherited. They eventually ended their pursuit of this idea.

The many Beneficiaries needed to be happy with 1.14% of a Billion Dollars!

- **A description of initial corpus to set up the Trust Organization:**
  - This includes the First Trustee's acceptance of the initial corpus which sets the baseline between income and principal.
  - Trustees can judge income as principal if the corpus of the Trust is less than when first fixed.
  - A description of what types of assets are to be accepted into an Irrevocable Trust from other people, usually family members.
- **For a Common-Law Trust, a statement declaring the Trust is created under private contract:**
  - A definition of jurisdiction clarifies under what laws the Trust performs.
  - For those legally inclined, this can include statements about commerce as it applies to the Buck Act.<sup>27</sup>

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<sup>27</sup>

Buck Act at 4 U.S.C.S., Sections 105-110 (d) and (e), respectively and "Jurisdiction Over Federal Areas within States, Report of the Interdepartmental Committee for the Study of Jurisdiction Over Federal Areas Within States," submitted to the Attorney General and President Eisenhower (Part I April 1956; Part II, June 1957).

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- **A statement about irrevocability:**
  - It must include the Grantor is clear that he or she gives up their assets willingly and with full knowledge of the results, and knows what he or she is doing.
  - The Grantor needs to have completed his or her own research or spoken to others not involved in the paperwork before setting up the Trust. We are aware that this declaration is included in some Statutory Trusts.
- **Retained powers, if any, of the Grantor for building up the assets of the Trust:** This has been covered in Volume I.
- **Governing instruments should mention Minutes to define and expand the original purpose of the Grantor:** For a Statutory Trust, there may be a statement about addenda.
- **A Paragraph stating domicile, which is the same as Trust Situs, yet so stated within a paragraph.**
  - Domicile becomes a major legal issue when in the future the Trust assets become spread across different states or even other countries, and Beneficiaries as well as Trustees live in distant locations.
  - The Trust Indenture can dictate that all matters must be settled under the laws of a particular state, or there can be a detail about how to handle separate issues. Usually, real estate issues within a Trust are settled in the state where the real estate is located unless otherwise noted.
- **Life or Duration of the Trust Organization:**
  - To be a contract, it must have an end date. For a Common-Law Trust, it is usually 21 to 25 years. The Trust Indenture can include a statement the Trust is renewable, and how to handle renewing the contract.
  - For a Statutory Trust, the Indenture includes a statement about when the Trust ends in reference to generations. The last generation to receive the disbursements is known as remaindermen. When the Trust ends, the remaindermen receive the corpus in reference to their percentage.

- **The power to terminate the Trust needs to include as many events as possible regarding when termination of the contract is and is not allowed:**

- Most common reasons are:
  - When the corpus falls below a certain value;
  - If the Beneficiaries cannot agree and cause endless problems for the Trustees;
  - Other sound legal reasons as may occur that cannot be foreseen in the present political or social environment.

It states in some Trust Indentures: If the Beneficiaries cannot agree and cause seemingly never-ending trouble, then all the funds of the Trust shall be given to a particular charity. This usually cools hotheads in the group.

- **Personnel allowed to act for the Trust, and their duties and responsibilities:**

- Mention the following, whether or not they will ever be hired. Always assume in two generations the Trust spills over with riches. Include a brief description of duties. State if these people can have a Trust custodial account, if they have the power to sign checks, whether there need to be two signatures, and if one signature should be a Trustee or both signers be a Trustee.
  - General Manager\Executive Secretary
  - Treasurer
  - Steward
  - Caretaker(s)
  - Cotrustees

- **Protector duties:**

- As time goes forward these responsibilities can become extensive. As mentioned before, we devote an entire chapter to the Protector and will go into greater detail then. Here is an outline. The Trust Indenture should cover a description of the following matters:
  - He or she is appointed by the Grantor.
  - Handling issues of mediation and arbitration for all Trust members about Trust business, and personnel interaction with

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- one another within the Trust group or with any matters that affect the group.
    - Protect the present and contingent distribution rights of the Trust Certificate Holders.
    - Succession format.
  - Powers of the Protector
    - Dismiss Trustee for
      - Violation of Trust Indenture.
      - Bringing dishonor to the Trust.
    - Right to change characteristics of the Trust that could expose the assets.
    - Right to review salaries, fees, percentages and to make changes to be in alignment with cash flow.
    - The right to ask for an audit.
  - Limits of the Protector
  - Process for the Removal of a Trustee
  - Process for the Removal of a Protector
  - Investigations of Trust Activities
- **Reasons for removal or change of status of a Beneficiary.**
  - **Board of Trustees:**
    - Voting: For example, if more than one Trustee, decisions must be unanimous. If more than three Trustees, decisions need two thirds agreement. If a member of the Board of Trustees objects to the decision and does not want to be part of the long-term results, he or she can write a letter to the Board of Trustees to exclude himself or herself from the matter.
    - Description of qualifications of a Trustee: This includes educational and business background as well as religious, educational, racial and other preferences. Any reference to racial preferences, though, cannot be for derogatory reasons. For example, the Indenture can state there must be no less than two Trustees from India because of the extensive land holdings in India.

- A statement about court-appointed Trustees: In a Common-Law Trust it states Trustees are not court appointed. Because of this, a detailed procedure outlines what happens if Trustees and Successor Trustees are not available or not performing before a court gets involved.  
  
In a Statutory Trust, the Successor Trustees may or may not to be court appointed.
- Powers of appointment of other Trustees: In a Common-Law Trust, the First Trustee usually has the power of appointment, or two thirds of the Trustees do if there are more than two Trustees. In a Statutory Trust, if the Successor Trustees are not available, then a stranger to the Trust may be court appointed.
- Who cannot be a Trustee: Sometimes the Grantor specifically does not want certain types of people as Trustees, or only a particular religious or educational background qualifies. The Trustees and the Protector need to understand the reasoning for the preference. Therefore, include a statement about the restriction or the preference.
- **Power of Attorney:**
  - Under what circumstances can it be used? In some Trust Indentures the Trustee has an unlimited power of attorney. This means he or she can walk away leaving the Trust in the hands of anyone.
  - What are the limits? We suggest the Trustees be limited in time and what Trustees can and cannot delegate.
- **Trustee Responsibilities and Restraints:**
  - Duties and Limited Liability of the Trustees. This is a standard section outlining that a Trustee is not personally liable for Trust events and actions.
  - Trustee Liability for negligence: This refers to not adhering to the Trust Indenture, and includes matters such as addictive habits that prohibit performing Trustee's duties.
  - Business of the Trust: This section describes permissible Trust business activities. For example, does the Grantor only want the Trustees involved in real estate? In our example of the Hearst Family Trust, the Trustees must perpetuate the media empire.



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- **Power to deal with the Trust Organization property:**
  - Does this include mortgages?
  - Development?
  - Start-up Businesses?
  - The Grantor needs to specify these matters.
- **Power to borrow and lend from financial institutions:**
  - Are there any limits?
  - Some suggest that a mortgage can be no more than two-thirds of the value of the property.
  - Name the reasons for borrowing.
- **Obligations to the Grantor:**
  - The Grantor is one of the priorities of the Trustees. In some Trust Indentures it is believed the Grantor gave up his assets for the benefit of others. Does this mean the Board of Trustees neglects him or her? What extras can the Grantor get, for example, in his or her old age?
  - Because of the tax laws, there is a matter termed “reversionary interest,” which can complicate what the Trustees can provide and what they cannot provide to the Grantor.
  - In this light, we never suggest all the Grantor's assets be placed into a Trust. The Grantor needs a separate pool of funds independent from the Trustees decisions.
- **Trust Capital Units—This section refers to Common-Law Trust only:**
  - How many issued? Because the Trust Capital Units can be divided and thus multiplied, it is not necessary to start out with more than 500 to 1,000 TCUs.
  - How are they managed? TCUs cannot be traded between members of the Trust Group, nor can they be pledged to third parties. They must be cashed out only through the Board of Trustees, or traded back to the Board of Trustees to be reissued to other Beneficiaries.
  - Who can inherit them? Usually the children also referred to as “issue of the body” of the Grantor and their decedents are the ones eligible to

inherit TCUs. This is where all those “what if” decisions are made. What if the first generation Beneficiaries do not have children? Who then gets the TCUs?

- Trustees hold TCUs while they serve, but not being of the bloodline, may not pass them to their heirs.
- While the Grantor is alive, the Adverse Trustee cannot be a Beneficiary. Yet once the Grantor passes, any of the qualified Beneficiaries can become a Trustee and hold the majority of Trust Capital Units, thus becoming the Adverse Trustee. To gain this position, though, the current Adverse Trustee must allow it.
- Rules and procedures for inheritance of TCUs: If a direct descendent becomes incompetent, gets into trouble with the law, or there are other complications, how should the Trustees handle the distribution?
- Can TCUs be exchanged with other Trusts and organizations? Usually this is assumed, unless limited in the Indenture.

- **Financial Conduct:**

- Accounting: What are considered trust expenses, and what will the Trust not reimburse or pay for?
- Disbursement: How often should it take place? Are the Trustees to distribute all of the profit?
- Charitable Contribution: what charities should be supported, who in the Trust Group should be responsible for charitable donations?

- **Procedures:**

- Meetings: How often?
- Recording Names of Trustees: In the official capacity of the Trust, the Executive Secretary is responsible to make available the names of the Trustees.
- Third Parties Relying on Actions by the Trustees: This is to ensure that sellers are paid by the Trust and the Trust is responsible, not the Trustees personally.
- Privacy: A statement about the privacy of the Trust. This may or may not apply to a Statutory Trust.

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- Dispute Resolution: How is it to be handled? This can be included in the section for the Protector.
- **Copies as Original**
- **Definition of Terms**
- **Severability Clause**

Now that we filled you in on the basics, here is how it plays out in real life.

### Creditors and IRS Liens

If a Trust is not written correctly, it can become subject to an IRS Lien. In an article appearing in the *Los Angeles Daily Journal* in April of 2006<sup>28</sup>, several factors must be included in a Trust document. Some of these factors dovetail neatly with much of what has been discussed. Here are a few excerpts from the article:

- Property given to a child is subject to the child's creditors. Instead, transfer the property to a Trust for the child's benefit. The Trust must contain a spendthrift provision.
- The Trust gives the Trustee complete discretion as to distribution of principal and income.
- A creditor can get only a portion of what is distributed to the child, and a judge cannot force the Trustee to make distributions. The Trustee can determine that the beneficiary needs all the distributions to maintain the Beneficiary's standard of living (and the creditor will get nothing)<sup>29</sup>
- Judges and creditors cannot force disbursements from a discretionary spendthrift Trust to satisfy a beneficiary's obligations.<sup>30</sup>
- The IRS can seize all mandatory Trust payments. The IRS may levy upon the taxpayer's property including Trust payments and future payments. In other words, if the Trust is written that an annual payment must be made to the beneficiary, then if the beneficiary has a tax lien, the IRS may seize the funds to the beneficiary, year after year until the payment is satisfied.

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<sup>28</sup> Bruce Givner, "Poorly Drafted Trust Could Become Subject to IRS Lien," *Los Angeles Daily Journal*, April 12, 2006, page 9

<sup>29</sup> California Probate Code Section 15307.

<sup>30</sup> California Probate Code Section 15305

## **Spendthrift Clauses**

This clause prevents most creditors from attaching the Trust. A suggested spendthrift clause is as follows:

No interest of any beneficiary shall be subject to sale, assignment, hypothecation or transfer by any beneficiary, other than in the exercise of an appointment power given to the beneficiary, nor shall the principal of any trust, or its income, be liable for any beneficiary's debt, or to the process of any court in aid of execution of any judgment so rendered.<sup>31</sup>

## **Summary**

Throughout Volume I we emphasized the impact on the family when a Trust becomes operational. Because writing a Trust changes the lives of many, take time to think carefully through the details, as well as consult with people experienced in this arena. In this chapter, we looked at the multifaceted nature of an Irrevocable Trust Indenture. Besides the differences about Trust Capital Units in a Common-Law Trust, the other main departure between a Statutory Trust and a Common-Law Trust lies in the tax considerations. These are often noted in a Statutory Trust Indenture. In the outline of a Trust Indenture in this chapter, the focus is on the Trustees' responsibilities to the Beneficiaries, and the power of the Trustees. As we did in Volume I, we refer only to tax matters but do not provide a lengthy discourse nor any advice This is not our focus.

We do not suppose that we have addressed all the matters to include in a Trust Indenture, but this gives a Grantor a good start on the subject. Often, other subjects surface, such as the care of those less fortunate family members who may have debilities, and the issue of their caretakers.

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<sup>31</sup>

Givner, *Ibid.*

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## Chapter 6: Loading the Power

In Volume I, Chapter 11, we explained the criteria to decide whether an asset is suitable for your Trust. Here, we focus on the protocols for getting an asset out of your name and into the name of the Trust. Whether or not you are the Grantor placing assets into a Trust, we now refer to you as the Exchanger. Assets placed in a Statutory Trust have no Exchangers, since they are referred to as Transferees. For simplicity in this chapter, though, we use solely the term Exchanger, although there is an important difference between the two terms.

We also use the term “transfer” in this chapter. Paperwork to get assets into a Trust “transfers” assets into the Trust. The term “exchange” refers to paperwork within the Trust. Therefore an automobile, for example, is *transferred* into the Trust's name at the Department of Motor Vehicles, yet *exchanged* into the Trust for Trust Capital Units.

According to the court case of *American National Bank of St. Joseph v. United States*, property received in exchange for another property has no fair market value.<sup>32</sup> Without a value, there is no taxable basis. This is why funds placed into an Irrevocable Statutory Trust are a gift, or a taxable event if the amount exceeds the gift limit. The assets are “transferred,” not exchanged.

We assume you determined, based on the previous criteria, exactly what you consider an asset. Because each is handled differently, we divide assets into five basic categories: real estate, intellectual property, financial, collections, vehicles.

The objective is for you not to be responsible for the maintenance, management or tax liability of the asset. Proper execution of the transfer documents marks a clean break from you and a concomitant acceptance of responsibility by the Board of Trustees. Changing the title sets the new ownership.

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<sup>32</sup> *American National Bank of St. Joseph v. United States* 92 F. Supp. 403  
June 30, 1950

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### **Exchangers**

Accompanying the paperwork created by the exchange is a letter to the Board of Trustees from the Exchanger explaining the following:

1. The purpose of placing assets into the Trust for specific reasons by the Exchanger.
2. The fair market value of the asset at the time of the exchange to provide a record that may be needed solely for tax purposes later.
3. Names of the Beneficiaries.
4. Specific instructions about the asset, if applicable.

In a Common-Law Trust the letter includes a statement requesting Trust Capital Units in exchange for the asset.

The Board of Trustees reviews the offer and either approves or rejects it.

### **Real Estate**

All property is recorded at the County Recorder's Office to fix its boundaries, assess its value and establish the yearly taxes. This real estate currently exists under the name of the Exchanger, who can give it away to his or her family or give it to anyone. If given to other than the family or Family Trust there are likely to be transfer taxes, sales taxes or some other fees involved. When selling the real estate, the buyer pays these fees.

Counties have become more particular about to whom property can be transferred. Sometimes, to ensure the property placed into a Family Trust is legitimate, the county requests the name of a Beneficiary; who must be related to the Exchanger, otherwise the fees may apply. As noted in Volume I, this is a direct challenge to Trust privacy.

Use a standard format Deed of Conveyance or a Warranty Deed to transfer the property. This document may be complex or simple, depending on the preferred style of the people involved in creating it. Because it transfers into a Trust, we prefer a more formal document. There are standard forms available at the County Recorder's Office, downloadable from the Internet, or from a paralegal. The wording needs to address a Trust status.

A more formal Deed of Conveyance, for example, will have the following parts to it:

## CHAPTER 6

- The name of the Exchanger and their address. The name of the Trust with the names of the Trustees. The address of the Trust into which the property is transferred and what is being conveyed. For example, real property, and the state and county.
- If the property is mortgaged, state the equity transfers into the Trust, and the Grantor releases to the Trust, its heirs and assigns forever, all of that certain lot, piece or parcel of land described.
- Surveyor's description of the property, usually taken from the previous Deed.
- A statement that all the rights of the Grantor in these premises, with any other buildings, improvements, hereditaments, etc. are also being transferred.
- If the property is mortgaged, then the conveyance is subject to mortgages listed on attached exhibits or schedules. Include their specific reference designation.
- An acknowledgment the Trustees have the right and responsibility of the property.
- Statement of covenant the Trust will quietly enjoy the premises, the premises are free from encumbrances, and the Grantor forever warrants the title.
- Any mineral rights. If not listed, they may be lost to the new deed holder.

Some prefer to use a Warranty Deed if there is no mortgage. The Warranty Deed follows the same basic outline, without mention of mortgages.

We have seen property transferred with only the property description and one sentence stating the name of the seller and the buyer.

The Grantor/Exchanger signs this new deed in the presence of a Notary. Before mailing it or taking it to the county, it is best to find any other documents needed by the county. There can be a property value form to complete, or a two-page declaration. The form often needs a detailed description of the physical characteristics and mortgage information.

After the Trustees, and maybe the Grantor/Exchanger, complete these other forms, mail the Deed or take it to the County Recorder's Office. After a month or two, the Deed comes back, usually without the added paperwork, to the Trust address either stamped or with a time and date indicator and recorder number in the Trust name.



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### ***County Formats and Preferences***

Sometimes the county wants its particular paperwork in a specific format, or needs certain data included. Many counties prefer one inch margins. Some counties need a value even if it is zero. It is not uncommon to do the paperwork repeatedly to get it properly recorded. Carefully read any county instructions proper to preparing the deed. This usually saves time, but because each county is different, there is no way to predict what will work and what will not work.

Once recorded in the Trust name, the Trustees are responsible to preserve the property and are liable for the taxes. The Trustees take responsibility for maintenance and repairs and Only they can sell the property.

The issue of whether the Grantor/Exchanger remains living on the property becomes a matter of debate. The easiest way to satisfy the taxing agencies is to have the Exchanger pay rent as long as the Exchanger lives in the property. Of course, these added funds into the Trust are to improve the property for the Beneficiaries, so this works well for the Trust.

### ***Rental Property Notification***

Notification of Transfer of Ownership: If a management company collects rent, once the transfer deed naming the Trust as owner is filed in the county and a stamped copy is returned to the Trustees, a photocopy of it is sent to the management company, along with a cover letter from the Exchanger giving instructions that payments are now addressed to the Trust.

Tenants: Paperwork to change rental payments to the Trust is through a formal letter to the tenants from whomever they previously paid rent. You need not give a lengthy explanation, simply direct them to make checks out to a different name, and give them the address and phone number.

### ***Mortgage***

Sometimes it is necessary to mortgage the property. Who has the best credit rating and the Trust property determines how this is done. If the Grantor is still alive, and he or she has the strongest credit rating, the property can be transferred back into the Grantor's name for the time to get the mortgage, and then transferred back into the Trust, and the Trust pays off the mortgage.

If the Grantor is no longer alive, then Trustees handle this responsibility, and it depends on the Trustees' credit rating and how much money is in the Trust. Banks usually do not loan money to a Trust, unless the Trust has substantial assets the bank can lien.

In rare cases, if the real estate is owned outright by the Trust, the Trustees, in the name of the Trust, may obtain a loan directly for the Trust. This applies when the amount borrowed is for less than the property value.

### ***Bankruptcy Time Clock***

Property must be in a Trust more than eighteen months to be exempt from bankruptcy, and in some instances, it is three years, depending on the state.

For example, property in Trust for four years or more cannot be considered part of the Grantor's property. The clock starts over if the property is taken out of Trust, put back into the Grantor's name and then put back into the Trust.

### **Intellectual Property**

Sometimes the transfer of intellectual property becomes complicated, and sometimes easier. If not registered, create an assignment to the Trust, notarize the assignment and give it to the Trustees. The transfer assignment states from whom, the item description, value and to whom<sup>33</sup>.

**Copyrights:** If the document has a copyright, fill out a new copyright. There is a section on the copyright form titled "Transfer." State the transfer reason. Any Trust documentation applicable to the transfer probably should go with the new copyright to meet any legal considerations.<sup>34</sup>

**Patents:** To transfer a patent to the Trust, follow these instructions:

To apply for a patent under 35 U.S.C. 111, transfer the ownership of a patent, or request other actions related to patents, certain information specified in the Patent Laws (Title 35, United States Code) and Rules (Title 37, Code of Federal Regulations) must be submitted to the U.S. Patent and Trademark Office (USPTO). Complete details on patent procedures, rules and regulations, together with the relevant forms are available at the United States Patent and Trademark Office.<sup>35</sup>

### **Financial Instruments**

This includes anything from bank debentures to promissory notes.

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<sup>33</sup> See Appendix B, Sample Format 9

<sup>34</sup> See Appendix B, Sample Format 10

<sup>35</sup> [Http://www.uspto.gov/main/patents.htm](http://www.uspto.gov/main/patents.htm)

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When there is a recording of the name of the Exchanger located in any official capacity, that recording needs a formal change of name. Most financial organizations have detailed paperwork to make the transfer. The Exchanger fills out the paperwork from the financial institution and signs it, then the Trustees sign in the appropriate space.

Often the Trust name, address and EIN are needed. Any changes to the account then come through the Trustees only.

Promissory notes are usually not officially recorded. There is an assignment portion of the promissory note for the Exchanger to fill out so funds he or she has been receiving go directly into the Trust. Give a notice of the new assignment to the debtors to redirect their payment to the Trust.

### **Cash and Banking**

Cash opens the bank account, preferably in the form of a check. A respectable amount is \$1,000.00. Eyes light up when the amount is \$10,000.00 or more. The more money there is to put into the new checking account, the more likely the account gets opened. One Trustee only opened accounts with \$50,000.00 or more. He said, "Banks never turn it down." That was before the Patriot Act. Now cash transactions of \$10,000.00 or more are red flagged.

Not all Trusts have \$50,000.00 to toss into a bank account. With fewer funds, the banking adventure varies.

Often, the banking experience is where the Trustees get their first fiduciary on the job training. Different banks have different policies. Some like Trust accounts; others will not open them. Some will only open Living Trust accounts, while others open Irrevocable Trust accounts. Private Trusts are not a problem with some banks, while others shy away.

Trustees need to set aside one day to go bank shopping. Even experienced Trustees sometimes need to go to three banks before they find an agreeable banker. We had Trust paperwork presented to legal departments that rejected it, while the same paperwork was praised by other banks. Further, a different bank with branches opened a bank account in one branch, while the other turned it down.

Since most of our experience is with the Irrevocable Common-Law Trust, you might think it has to do with that aspect, but the paperwork to open a bank account is distilled from the best in the statutory world.

Lately, banks have decided not to take responsibility for two-signature accounts. We tell them it does not matter, because we take responsibility for it.<sup>36</sup> This is because our Trustees know, for their own safety, two signatures means they cannot be accused of using funds for themselves—not that they would, but any added assurances makes them happy.

After opening the bank account, establish a good working relationship with the people in the bank. With any changes of Trustees, update the banking paperwork. The more money flowing through the account, the more they notice. Your appearance at the bank can just make their day!

Do not use familiar banks. To keep Trust assets safe, the bank account and all financial accounts should not carry directly over from the Grantor. There are some banks that link all accounts together through the Social Security Number. This account belongs only to the Trust and Trustees. The Grantor and Trustees should not have other accounts on which their name appears at the same bank.

### **Insurance Policies**

One of the most common assets put into a Trust is an insurance policy. The insurance companies all have transfer paperwork available to place policies into a Trust. The Trust then becomes responsible for paying the premiums, and when the policy cashes out at the death of the insured, the funds come into the Trust. Through the instructions left by whomever was originally insured, the Trustees distribute or invest the funds.

Accepting a life insurance policy into the Trust requires recording various facts and instructions in the Minutes. Refer to Appendix D, Sample Format 19 for appropriate and necessary information to include in the Minutes.

### **Collectibles**

This section covers anything from coin collections to antiques. Collections are more difficult, for the Board of Trustees must keep inventories. The collection is usually not officially recorded at any institution. If the Board of Trustees is willing to take on the responsibility, then the Exchanger creates and notarizes an assignment Form.

This often needs an extensive inventory. Without the inventory, the Trust cannot claim the assets. Further, expert appraisals may be needed to establish the collection's value. This is not just for tax purposes, but to ensure proper insurance coverage, as well as establishing the initial corpus.

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<sup>36</sup>

See Appendix F, Sample Format 26

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### **Vehicles**

Only owned vehicles, not leased, can be put into a Trust. For the Trust to take legal possession, fill out a sales slip from the Exchanger to the Trust. Present it to the Department of Motor Vehicles. The Trust pays the sales tax. This keeps the Exchanger at arm's length.

In some states the Grantor can "gift" the vehicle to the Trust, and there is no tax. Using this method can confuse the title. The easiest way for the Trust to get the asset is to pay the sales tax.

Vehicles are legally referred to as lethal weapons. Keep them in their own separate Trust with genuine Beneficiaries. The insurance policy is for the vehicle in Trust, under the name of the Trust and the Trustees. The Beneficiaries have the right to use the vehicle if it is available.

Do not put two vehicles in the same Trust.

### **Funding**

The transfer of assets into the Trust often produces a cash flow within 30 days. Usually, it is from the investment account(s), or if there is rental property, the rents are now directed to the Trust.

If the Trust cannot produce its own cash flow, then it is a Grantor Trust and the Grantor remains taxable. All Irrevocable Trusts need to produce their own income without interference from or reliance on others.

### **Management of Assets**

#### **Asset Purchases**

Use credit cards, dedicated to the Trust, to buy assets. Also, use checks and money orders. Any Trust member who buys assets or supplies with personal funds is paid back by the Trust.

For the Trust to use a credit card, one of the Trustees needs to apply personally for it. Financial institutions resist giving a credit card to a Trust. So paying the credit card is not income to the Trustee, the Board of Trustees needs to identify the card and formally take responsibility for its payment within Trust Minutes, or by a separate agreement between the card holder and the Board of Trustees, stating that this is for Trust business only and is not income to the Trustee.

### **Trust Property Identification and Approvals**

As a Trust matures, the number of financial and real estate transactions multiply. At some point the Beneficiary may want to know if an asset has increased or decreased. This may need tracing several transactions. Therefore, the Trustees must keep an accurate record of the assets, not only for the Beneficiary, but as a historical record.

Treat most small purchases of equipment, for example, under \$3,000.00, as office supplies, and keep receipts with the account manager. Because of their short life, treat computers as office equipment and not as an asset. They often need upgrading and replacing. They are an expense.

Detail purchases over \$5,000.00 on asset forms. Include serial numbers, warranty information and a description clear enough to give to the police should it be stolen. Secure an identification tag to the item on which the name of the Trust appears with an asset number.

Document transactions about real estate in the Minutes.

Large purchases, for example, over \$50,000.00, need the approval of the Board of Trustees through Minutes documenting a general discussion of why the purchase is necessary.

Separate Trust asset schedules for each Trust by asset, such as Schedule A is a list of large office equipment, Schedule B is a list of checking accounts and financial institutions, Schedule C documents office furniture.

### **Asset Splits Because of Separation<sup>37</sup>**

Separate assets placed in the same Trust by an Exchanger. He or she may want to move them to another Trust, or seek a change of management. Also, keep asset lists separate by type so there is no confusion about what assets go where. If not individually tagged, mingled assets cannot be identified. To sort out the confusion, they all may need to be sold and the cash shared. If this happens, then all the TCU holders get a payout.

### **Turning Assets into Cash**

Sometimes it is necessary to sell assets to create more cash or to turn a static asset into a cash flow. For example, if vacant land is not appreciating at a significant rate, it would be better to free the funds to invest in a growing enterprise.

Cash from liquidated assets goes into the Trust checking account. The Board of Trustees decides if all or part of the funds go to the Beneficiaries or are reinvested.

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<sup>37</sup> See Appendix D. for Minutes regarding Trust Capital Unit Splits.

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There are several other reasons to liquidate. These depend on various circumstances that change from year to year. It may be necessary to dissolve the Trust. In the Common-Law Trust, the assets belong to the TCU Holders per their percentage. Because the Trustees hold most of the TCUs, they get the largest payout. This discourages other TCU holders from seeking to close out a Trust. Besides that, a Trust is the golden goose—producing funds indefinitely.

The Trust Indenture states dollar value of the minimum corpus. If the Trust corpus falls below that value, then there is a possibility of ending the Trust. When this happens, there usually are not enough funds to distribute. Sometimes, though, the Trust has enough funds, but the Beneficiaries cannot get along. The Trustees decide it is not worth the trouble and cash out investments and property. The TCU holders get their share. In a profitable Trust, the IRS gets its taxes from K-1s submitted by TCU Holders.

Sometimes because of complications beyond anyone's wildest dreams, the original corpus needs to be returned. Some of these reasons are:

- Trustees placed the assets into funds that failed.
- The Exchanger's behavior is intolerable, and it is not worth dealing with him or her.
- Unforeseen difficulties cause bankruptcy or other financial problems with the Grantor within the first eighteen months of the Trust.
- Troubles with 'agencies' of any type disrupt the organization to such an extent it becomes impossible to continue.

If the asset has not increased, return it with only documentation. If the asset has increased, the Exchanger may need to pay taxes on it. A statement known as a Return of Original Corpus can be notarized by the Board of Trustees. State the original corpus value and the current value. A suggested format is found in the Appendix.<sup>38</sup>

### Wasting Assets

A gold mine and timber are two examples of a wasting asset. The more taken out of a mine, the less the mine has to give. This places a life span on the asset. The same with timber, unless trees are planted to replace the ones logged. Often, there is a provision in a Trust Indenture advising the Trustees to sell wasting assets before they become unproductive. Of course, this is a judgment call of when that would be.

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<sup>38</sup>

Appendix B, Sample Format 11



Another wasting asset is a bank account that does not earn interest, but charges an annual or monthly fee. Placing funds in it can be costly. The famous Swiss Bank Account falls in this category.

### **Certificate of Loss**

Take inventory of assets at least every couple of years. It is not unusual to discover something missing. Whether it is stolen or not is unknown, and its location becomes a mystery. Create of a Certificate of Loss to identify the lost property. This establishes a record that it cannot be found.

Unless an item is expensive, it is not necessary to make out a police report.

### **Accounting**

Because different asset types are placed in different Trusts, this collection of assets can be given to another Trust for management, or to a Corporation. An entity with a checking account takes care of maintenance for whatever is in the Asset Holding Trust. Because of this, the accounting needs to track each Asset Holding Trust individually.

This becomes especially valuable if a Trust member decides to put personal assets into the Trust Group. Setting up a Holding Trust for personal “stuff” allows easier accounting for that set of Beneficiaries. While the management remains the same as in the main Trust, it can use the same Board of Trustees to handle the assets by Trust. Also, the Trustees on the Asset Holding Trusts can be different than those in the Management organization. For example, there may be five Trustees for the Management Trust, and each one of is a Trustee on different Business Trusts or Asset Holding Trusts. The Cotrustees can also be mixed among Trusts.

Residential property is one of the most common uses of a subtrust. Track the expenses for the home and the rental payments separately through management accounting. The management can be through a corporation or other business entity. the Holding Trust remains a separate Trust.

For example, if one of the Trustees decides to put a stock portfolio into a Trust, it gets a separate asset holding Trust with named Beneficiaries. Although the account is registered under the name of the management organization because it has an E.I.N. and a checking account, keep the internal bookkeeping as a subcategory. In some accounting programs this is a job classification, or job tracking.

Residential property in a Trust needs financial support. The Grantor can no longer pay for the maintenance and repairs. her or she can pay rent, though, pay rent while the Trust picks up the expenses. Another way is to have an income-generating account put into either a Management Trust or another holding Trust. Make the Trust holding the



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residential property a Beneficiary. As you can see, with enough of this cross-over set up, the organizational format becomes complicated. We provide a diagram in a later chapter.

### Joint Property

Through marriage,<sup>39</sup> unless the state in which a couple lives has a different set of laws, all assets are either community property<sup>40</sup> or joint property. Separate, inventory, catalog and thoroughly document assets before putting them into a Trust. Some Trust organizations need a Joint Property Agreement completed and notarized before accepting from a married couple any assets into an Irrevocable Trust. This is because joint or community property laws supersede an Irrevocable Trust. Both partners need to agree to put together a Trust for their children. If either one of them backs out, the Trust creation stops.

There are 41 states still recognizing common law marriage where each partner keeps personal assets. Even in this case, we feel a formal separation needs to take place prior to placing assets into a Trust.

In one incident the wife shared in the Trust creation, and signed the Joint Property Agreement as part of the formation. The Trustee did not leave that agreement with her, but kept it in the Trust books. The wife had the Trust books at the time she decided to divorce her husband. To add to the complications, the wife's family wealth allowed the parents to hire a team of lawyers. After the judge looked over the Trust document, he refused to have the issue brought in the courtroom. He wanted nothing to do with destroying an Irrevocable Trust. Even without the Joint Property Agreement, he could see the Trust was legitimate. Although there was no legal reason to do so, the Trustees eventually, after several months, gave in and signed the property back to the wife.

Had the First Trustee involved kept a copy of the Joint Property Agreement in her possession, and had the Trustees not been willing to give in, they could have kept the property for the Beneficiaries. Further, the judge's decision gave the Trust the dominant position. The property would have remained in the Trust. Because the Trustees did not fight, the Beneficiaries were the ones who ultimately lost..

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<sup>39</sup> The state becomes a third party when a couple gets a marriage license. See Appendix J. Presentation 5. The marriage contract allows the state to take the children.

<sup>40</sup> See also Internal Revenue Code, Part 25. Special Topics. Chapter 18. Community Property. Section 1. *Basic Principles of Community Property Law*.

## CHAPTER 6

The emotional issues surrounding assets in a Trust can be explosive. This is why keeping exceptional documentation and accounting details up-to-date is essential. Training the Trustees establishes confidence in their position with the know-how to protect the generations to come.

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## Chapter 7: Minutes, Masters of the Moment

**W**e covered the Trust Indenture in Chapter 4. Even the outline, designed to support your family for generations, should cause you to ponder deeply about what is appropriate. The Grantor may start with a generic template. It contains only basic points and ideas. The more the Grantor contributes to its making, the more original it becomes.

### **From Broad Strokes to Details**

The final document holds broad strokes to provide guidance, and concepts to carry the family forward. Working out the everyday problems, the small details as events arise, is a different matter. This is where Minutes contribute to the overall smooth running Trust.

### **Saved by Details**

The Board of Trustees must faithfully keep Minutes of its meetings, not just because they form solid evidence of the Trust's legality, but for routine reasons. The minimum frequency of Trust meetings when there is not much activity is once a year.

If you have scrupulously kept these records, details you would never have expected to be important could save you during a debate with a Trustee, or to provide proof to a Beneficiary. The Minutes supply a part of your legacy to the Beneficiaries. They are a priceless family history and an educational tool for future generations, who will continue the family tradition of adding assets to the corpus for the benefit of succeeding generations. Therefore, you should regard the Minutes as an asset: "The information asset," if you will, or "the wealth of knowledge ingredient" of your estate.

We have found them to be valuable when training a new Trustee or other Trust Officers. This person's first day on the job is spent reading all the Minutes. This provides a history that contributes to the new Trustee's participation and contribution to the Trust Group.

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Consider the Hungarian family in the superb 1999 film “Sunshine” as an object lesson. The patriarch’s secret formula for the tonic drink made the family a fortune. Not secured in a safe place, it became lost. It did not survive the devastation of two world wars. This valuable recipe could have helped the family bounce back to confidence and comfort. Matters of this nature become a family affair. More than one person needs to hold the confidential key. Although the recipe is not in the Minutes, references to it would lead family members to its location.

Not only do records of meetings provide a history of the Trust to far-future descendants; you will not believe how often you yourself will refer to them—next year or next week.

### **Agenda**

When any Board of Trustees meets, make an agenda of subjects for discussion. To allow time for preparation, give it to them at least three days before the meeting.

### **Date, Place**

Minutes must have a date, and a time to give them full validation. Also, attach the agenda of the meeting to the signed copy of the Minutes. Include the name of the place or places if the meeting is by telephone.

### **Present**

Use the full name of attendees. People need to be either physically present or on telephone conference. If they attend by telephone, note it by placing (by telephone) after their name. If a person attends who is not a regular member of the Board of Trustees, list that person as an attendee, then identify said person’s expertise, or state why he or she is present in the body of the Minutes.

### **Issues Discussed**

Note all subjects presented and their resolutions. Unlike Corporate procedure, the Trust is not so formal. There is no parliamentary format here. A discussion needs not to state clearly the decision. It may roll out casually, and somewhere in the dialogue, a Trust member takes responsibility to act. Although the discussion is general, the decision must be specific, detailed and clear. When creating the Minutes, pull these decisions out and make each of them into a stand alone resolution. Refer to this sample Minute in the Appendix.<sup>41</sup>

There may be a decision to revisit a matter later. In this case, include the facts about the subject in the Minutes to review in the future.

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<sup>41</sup>

Appendix D. Sample Format 21

In composing the Minutes, avoid judging, or taking sides. For example, if the discussion is about buying property, and there is an argument about how much to pay for it, simply state the name of the person who had the question or the position, and why he or she feels that way. This is not a novel, so avoid descriptions of facial expressions, slamming fists on the table or other uncomfortable events. You can describe shock, surprise, mortification, elation if it directly relates to the discussion and resolution.

The common subject matters discussed at the Board of Trustees Meeting fall under general headings and are:

- Administration
  - Policies and Procedures
    - Do you want the accounting handled in a particular way?
    - Do you want memos shared?
    - Do you want to create a Policy and Procedure Manual?
  - Education of the Board Members and Beneficiaries
    - Are there specific lectures or classes they need to attend?
    - Are there educational standards?
    - Are there books to read, certain magazine subscriptions required?
  - Status of the last Minutes
    - Are they signed?
    - Where are they?
    - Is there Unfinished business?
  - Medical and Health Issues
    - Are there insurance policies?
    - Are insurance policies needed, necessary?
    - What is the status of members needing health-care support?
  - The next meeting date
    - When will it be?
    - Where will it be?
- Legal
  - Current applicable events about the Trust.
  - Memos and news clippings about estate planning procedures.
  - IRS, SEC and other matters of this nature that affect the finances.

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- Trust Certificate Register
  - Are more TCUs needed? Should there be a split?
  - Is the Trust Certificate Register up-to-date?
  - Should Certificates be issued?
  - Beneficiaries and TCU holders
    - Removals
    - Additions
    - Individual status
- Financial
  - Issues with Bank Accounts
  - Status of Merchant Accounts
  - Review of Financials
    - Balance Sheet
      - How are the current investment doing?
      - What is the status of the current assets and liabilities?
    - Profit and Loss
      - Expense review
      - Financial needs
      - Cash flow
        - \* Budget planning
        - \* Projections for greater or lesser cash flow
      - Potential investments
  - Asset Holding Trusts
    - Administration of individual Trusts
    - Buying and selling of assets
    - Distribution per asset holding Trust
  - Other matters

A more detailed Agenda is in the Appendix.<sup>42</sup>

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<sup>42</sup>

Appendix D. Sample Format 18

### **Never Tell**

Do not record derogatory remarks about others. Written words of this nature, in the wrong hands, can make the Trust liable.

Never record decisions to backdate documents. For example, decisions to change recorded dates. This information, in the wrong hands, can undo the entire Trust, for if you backdate or change a date, then all dates become suspect.

### **Different Trusts and Different Subjects**

At the Board of Trustees Meetings discussions cover all the issues for all Trusts and Beneficiaries under their care. After review and approval of the Minutes, remove those parts belonging to other Trusts to create separate Minutes for each Trust.

### **Resolutions**

Resolutions, issued under the authority of the Board of Trustees, sanction the members of the Trust Group to act for the Beneficiaries. Also, resolutions allow the members of the Trust Group to take action for the Trust. They provide justification for activities of the Trust members should a decision come into question.

Resolutions are one paragraph and contain full names, addresses, serial numbers, descriptions, references to related documents and names of others involved in the resolution.

The suggested format and the one used in this book is: The first resolution states IT WAS RESOLVED. If more than one paragraph, the second paragraph needs to start IT WAS FURTHER RESOLVED. Any paragraphs following the first two start with IT WAS ALSO RESOLVED.

Resolutions are stand-alone issues. That is, they must tell all there is about the decision relevant to fixing exactly what action and who is responsible. Information contained in the Minutes that leads up to the decision is not part of the resolution, but important information to include.

### **More than Three**

The Trust Indenture. The minimum is two Trustees. If the Board of Trustees has three members, the Trust Indenture may state that two-thirds can decide. If this applies, if anyone dissents, he or she may choose to abstain from taking responsibility for the actions of the group. He or she writes a letter to the Board of Trustees about said dissenting position. If so stated in the trust Indenture, not all Trustees need to decide; in this case, record the dissenting statement and reason for abstaining in the Minutes.



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If decisions must be unanimous, then if one Trustee does not agree, no action can be taken.

### **What Is Necessary?**

Here is a list of some of the standard Minutes that might occur in the first six months or years of your Trust:

- Acceptance of the initial exchange of corpus
- Appointment of officers included in the Board of Trustees. These appoints would be the Executive Secretary and General Manager as well as the Cotrustee, and any others who hold significant positions, such as a Treasurer.
- Privacy standards: nondisclosure or an Oath of Privacy
- Approval to issue TCUs to Officers
- Beneficiaries and any issues or decisions about them
- Successor Trustees and Managers including their background
- General Manager responsibilities and powers
- Officer Training and Travel Expenses
- Investment policy and approval of signatures given to financial institutions
- Life Insurance, instructions about distribution
- Trust Capital Units: Allocation, and any other details decided, such as splits
- Banking Resolution and Certification of Trust given to banks to open checking accounts

Other Minutes may be about important transactions needed at key times to evidence ownership and provide such necessary information for the Trust to profit from opportunities and counter troubles as they arise.

Your well-kept Minutes will go far to satisfy the basic requirement of Trustee accountability. Without them, your Trust may become invalid.<sup>43</sup>

All lengthy Board of Trustees Meetings need an agenda along with Minutes signed by the Trustees present. The agenda keeps everyone “on the same page.” if the meeting

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<sup>43</sup> *Work County v. National Bank*, 4 Cal2nd 532, 51 P2d 90.

handles only three to four subjects, an agenda may not necessary, depending on the way your Trust sets up its procedures.

### **Delayed Results**

Sometimes a Trust runs smoothly but because of a great amount of activity, the Board of Trustees may lapse in its diligent recording of Minutes. Consider this—what if a lawsuit happens and the Trustees need to either consult with or hire a lawyer? Where are the records of the Trust about the disputed matter? That is right, in the Minutes. Properly written Minutes can be much to the advantage of the Trust. It may be necessary to turn them over to an attorney, as they should be one of the clearest testimonies of events as they occurred.

If there are current issues which may need documentation in the future, whether or not a legal matter may occur, use the forum of Minutes. This applies to General Manager's Meetings or Board of Trustee's Meetings to ensure the Trust's position and the facts.

Put in the correct chronological order the knowledge and timing of incidences and decisions. At the time of the meeting, the Minutes accurately reflect the events. Do not edit them to include knowledge that happened after the meeting.

### **Tips and Reminders**

- Put full names of attendees, location, time started.
- If the meeting was by telephone, state it, and include the locations of the people in the meeting.
- Inside the Minutes always refer to people who were at the meeting as Mr. (or Ms.) plus the last name. In resolutions, use the full name and title.
- Include total information in Resolutions. This is because the Resolution holds the greatest significance; everything else is relevant background. The judge makes the determination by using the Resolution, so record complete, stand-alone information. This includes full names, full titles, company names, numbers, amounts.
- It is Resolutions that control the action taken and orders given, and we have often used them to settle disputes among Trustees and other Board members.
- If a person is not at the meeting, he or she cannot offer any information in the Minutes.
  - If a person spoke who was not listed at the meeting, it invalidates the entire Minutes because they are obviously incomplete or inaccurate.

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- Create new Minutes if a different event occurred outside a particular meeting. If the Trustees are not all present, then it can be a report to the Board of Trustees or a General Manager's Meeting where a quorum is not needed.
- Minutes are a testimony about decisions and facts, and when Minutes testify against themselves, the facts cannot be proven.
- Do not tell falsehoods because you will not remember the intricate details of a lie several months or years later when an event needs clarification.
- Avoid contractions (they're). This is a formal document. Always assume it will land in the hands of an opposing attorney. Write accordingly. They will mock you for your ignorance.
- Do not be vague. Try to be clear. Avoid use of words such as "something, said it all, caved in, isn't doing anything..."
- Use the full name of companies, such as International Business Developments (IBD), followed by parentheses around the shortened version.
- Do not use a fictitious name of the Trust in the Minutes, unless the context is specifically about the activities under the fictitious name.

## **Asset Holding Trust Minutes**

Every Trust must have a minimum of one Minute per year. The following list gives routine types of actions for which Minutes and resolutions apply. We have noted how to apply these subjects to Minutes.

### **Minutes per Trust Type**

#### *Automobiles*

- ◆ Repairs and Maintenance: Funds need to be approved to repair and maintain the vehicles and a description provided of needs beyond routine maintenance
- ◆ Issues with insurance: Is the coverage enough? Is the insurance company giving proper service, are they being responsive?
- ◆ Accidents: If there have been accidents, give details and decisions.
- ◆ Buying and selling: Should the car be sold?

## CHAPTER 7

- ◆ Beneficiaries approved to drive vehicles: Who is approved to use the car? This may be a list of people.

### *Household Goods*

- ◆ Inventory completion: Has the fine china been inventoried? When will it be done, and who is responsible to do the inventory?
- ◆ Sorting inventory: Are Trust assets mixed up? Who should sort them out?
- ◆ Purchase of large items: Does the refrigerator need to be replaced? How about the washer and dryer?
- ◆ Discarding smaller items: Who needs to decide what needs to be discarded?
- ◆ Beneficiary allocations: Should certain items in this Trust be listed on the Pour-Over Will to be passed to specifically named Beneficiaries?

### *Commercial Property*

- ◆ Repairs, Maintenance, Improvements: Budgets, and lists of improvements are big subjects for this meetings Minutes.
- ◆ Rent collection: Is there a report of past due rents? Is there a projection of occupancy?
- ◆ Tenant issues: Are there troubles to be discussed?
- ◆ Subleases: Is there a policy about subleases?

### *Residential Property*

- ◆ Repairs, Maintenance, Improvements: What is the condition of the property? What needs to be repaired?
- ◆ Buying and selling: Is the market right for either buying or selling?
- ◆ Mortgages: What is the projected payoff date?

### *Collections*

- ◆ Appraisals: Has the jewelry been appraised?
- ◆ Accurate inventory: When was the last inventory? Does it need to be done again? Added assets: Have new assets been properly cataloged? Selling assets: What will be the distribution to the Beneficiaries if the assets are sold?

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### ***Investments***

- ◆ New investments: Is there enough cash flow to make further investments? Should they be long-term or short-term?
- ◆ Status of current investments: Are they making a profit?
- ◆ Long-range cash-flow goals: Are these funds used for education, purchase of property?
- ◆ Beneficiary distributions: Are Beneficiaries receiving enough or too much?

### ***Equipment***

- ◆ Rental agreements: Are rental agreements up to date? Are new ones needed?
- ◆ Inventory: Has inventory been kept up?
- ◆ Repairs and Maintenance: Are repairs or maintenance needed on equipment?
- ◆ New purchases: What are the business opportunities if new equipment is purchased?

## Chapter 8: So, You Think You are Free?

**T**he right to contract allows us to choose our own path, providing we have enough education to do so. We can write contracts where we agree to be bound by certain limitations, and we can write them where we bind others. The odd thing about the right to contract, is you can contract away your freedom.

### Beyond the Laws

The current legal and political standards thwart some of the basic principles of contracts:

- When a politician does not want to be “caught” he or she shreds evidence.
- Recovery of breached contracts under \$50,000.00, as well as investment losses, is prohibitive, since the cost of litigation far exceeds the gain.
- The legal battle over a disputed contract takes considerable effort. The time and expense are only worthwhile for significant reward, and one you are assured to get.

Small Claims court handles cases under \$7,500.00 in California<sup>44</sup> without legal representation. Check with your state for limits and rules.

Despite this, business cannot continue without clear agreements in the form of written contracts. All Trusts are contracts first, and whether they are Statutory or Common-Law is secondary. The right of contract stems from ancient laws.

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<sup>44</sup> California: An individual cannot ask for more than \$7,500 in a claim. Corporations and other entities (like, government entities) cannot ask for more than \$5,000. You can file as many claims as you want for up to \$2,500 each. But you can only file 2 claims in a calendar year that ask for more than \$2,500.

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In fact, agreement is what makes life work. For example, if there is no agreement about the Federal Reserve Note's value (sometimes referred to as the dollar), then there is no value. This applies to gold and silver.<sup>45</sup> Beyond the laws of supply and demand, more fundamental is the agreement that these items have value. Because of the industrial applications of gold and silver, we need them to assure the convenience of our life. Therefore, they have value.

### **Contract Types and Differences**

We can put contracts into various categories. The following is not a complete list:

- Financial
  - Promissory Notes
  - Investments
  - Banking and Loans
- Third Parties
  - Private Contractors
  - Independent Contractors
  - Vendors of All Types
- Employment
  - Employment Contracts
  - Benefits and Deductible Plans
- Lease and Rental
  - Vehicle Leases
  - Rental Properties
  - Commercial Leases

### **Obligation of Contracts**

If a person wants to make a deal or agreement, he or she can do so as long as it is within legally accepted contract rules.

As mentioned in Volume I, the United States Constitution secures the right to contract:

No State shall enter into any Treaty, Alliance or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit;

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<sup>45</sup> See Appendix L, Presentation 13 - Gold and Silver Exchange Values including the article by Ed Haas, "The American Eagle Preys Upon the IRS," *Muckraker Report*, April 2008

make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts's, (emphasis added) or grant any Title of Nobility.<sup>46</sup>

### Impairment

Impairing the Obligation of Contracts means the government cannot interfere with the private right to make contracts, and cannot change the obligation one party makes to another. This gives each person freedom to decide his or own direction and, thus, design his or her life.

Should the specifications within the contract not be upheld by either person, the one who did not break the contract has the right to sue the other. If the People do not have this right, they are slaves—not having the freedom to control their own destiny.

What enslaved the black people in the South were these two rights denied:

- The right to contract
- The right to sue others

The right to sue gives leverage, either as a defense or for redress. The denial of this right creates victims who become helpless and oppressed. The same holds true if people are ignorant of their rights. Without proper training to both defend themselves and demand respect, they become slaves, even though they believe they are free. To become part of a Common-Law Trust demands that you take responsibility—this is where many become unqualified. Even if no battles over assets occur, those within the Common-Law Trust need to be willing to participate to claim the right to create their own destiny. Key to this right is contracts.

To create a contract, you must know the rules. Therefore, contract wording is precise so as to leave no doubt about the meaning. Many contests in courts are to settle the original intent and the meaning of contracts. Even one ambiguous phrase, sentence or paragraph can cause endless debate—especially when millions of dollars turn on the decision.

### Expected Performance

Contracts can be tricky. When a contract does not clearly state both the intent and expected performance of the parties, it has no substance and meaning. It is not a contract and, thus, is void for lack of clarity. Performing the action in the contract gives

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<sup>46</sup> Article I, §10, United States Constitution.



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it substance and meaning. For example, one may sign the Trust Indenture, but never fund the Trust. The act of transferring money into the Trust checking account, though, confirms the agreement.

Some contracts are not enforceable because they are “repugnant” to the laws of man. Therefore, a contract to break social laws, or a contract to harm another is not a contract, but a violation of the overall intent of society.

### The Regulation of Slaughterhouses

The greater good of society is more important than a contract between two people or between a company and a state.

When does a legally binding, well-written contract become unenforceable? To answer this question, we turn the clock back to over 100 years ago.

Through an act of the Louisiana General Assembly in 1869, the Crescent City Livestock Landing and Slaughterhouse Company got an exclusive contract in 1874 for 25 years to engage in the business of butchering.<sup>47</sup> In 1879 the Louisiana Legislature changed its state constitution to allow counties to regulate slaughterhouses. This resulted in another company’s, Butchers’ Union Slaughterhouse and Livestock Landing Company, represented by Mr. Thomas J. Semmes, receiving a second exclusive-rights contract for 25 years. He brought a suit in the Circuit Court to get an injunction against the Crescent City Livestock Landing and Slaughterhouse Company, represented by Mr. Foreman.

The injunction stopped the Crescent City Company from butchering, even though it had the first contract.

The first legal contest brought by the Crescent City Livestock Company went to federal court on the pretext the state of Louisiana impaired the obligation of contracts—it allowed two different companies exclusive rights. The court agreed with the Plaintiff, Mr. Forman and the Crescent City Livestock company, which held the first contract. They, then, continued to perform services.

Mr. Semmes of Butcher’s Union which received the second contract, filed an appeal. He objected to the decision based on the legal premise that:

... the act of 1869 partakes of the nature of an irrevocable contract, the legislature exceeded its authority, and it had no power to tie the

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<sup>47</sup> *Slaughter-House Cases* 16 Wall.36.Appeal, October Term 1885, April 9th.

hands of the legislature in the future from legislating on that subject without being bound by the terms of the statute when enacted.

In other words, he challenged the Act of 1869 based on the premise it did not allow future legislation on the subject. This threw the entire matter into federal jurisdiction. Mr. Semmes did not believe the Louisiana Legislature had the right to change its tactics, and thus grant exclusive contracts.

By raising the issue, it opened the door to many other avenues where the justices could make decisions. The question about the contract became a major object of focus—not just whether the contract was impaired, but whether the contract was viable. Here is a summary of the problems and solutions. The court noted the following facts:

- The Plaintiff, Mr. Semmes, argued the Act of 1869 set up the basis for a monopoly. The U.S. Circuit court disagreed because the contract's duration ended in 25 years. The checks against monopolies in the 13<sup>th</sup> and 14<sup>th</sup> amendments did not apply.
- The constitutional power of the state to enact the statute was upheld by the U.S. Circuit Court.
- Trade [including slaughterhouses] harmful to the general population must be regulated, and private interests must be made subservient to the general interest of the community. Therefore, it is in the right of the Louisiana Legislature to create the contract.
- Because the original contract fell within the right of the Louisiana Legislature to create, the second contract is not upheld.
- Even though this was unfortunate for Butcher's Union, the Circuit Court upheld the right of the Louisiana Legislature to legislate, and the federal government could not interfere.

### **Interference?**

In case after case references in the Slaughterhouse appeal, the judges clearly settle that no federal, state or county government can create laws harmful to the health and moral issues of the public. Any contract threatening the welfare of the people can be judged null and void.

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### Congress Abridges

Although the U.S. Constitution gives the People the right to contract, statutory based contracts can be abridged. In the matter of student loans, we find a recent case where a contract is abridged by Congress<sup>48</sup>:

FLETCHER, Circuit Judge:

Appellant James Lewis seeks review of a final judgment issued by the United States District Court for the District of Idaho in favor of appellee United States Department of Education (Department). The bankruptcy court held and the district court affirmed that a congressional amendment to the law governing the dischargeability of a student loan obligation in bankruptcy may be retroactively applied to an obligation incurred prior to the date the law was changed. Whether the district court correctly ruled that the retroactive amendments govern appellant's student loans is the single issue of law before this court on appeal. Appellant's central argument is that he had a right to rely on the statute of limitations in effect at the time he incurred his obligation because (a) the statute of limitations was an implicit term of the contract he signed, (b) his contract created a property right to discharge his student loans after the prescribed statutory period, and (c) any government action to impair his contractual right violates his Fifth Amendment right to due process.<sup>49</sup>

We reject his challenge. Bankruptcy is a legislatively created benefit, not a right, that Congress may alter or withhold at its discretion. It did

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<sup>48</sup> *James Lewis v. United States Department of Education*, No. 06-35255 D.C. Nos. CV-05-0034-S-BLW, ADF. #04-6060 OPINION

<sup>49</sup> Appellant also attempts to invalidate the relevant congressional amendment under the Sovereign Acts Doctrine. The doctrine holds that when government undertakes a public and general act, it is not liable for incidental breach of contract liability to private parties with whom it contracts. See *U.S. v. Westlands Water Dist.*, 134 F.Supp.2d 1111 (E.D.Cal., 2001). Appellant does not have a contract incidentally breached by a public and general act. Rather, he is one member of the class intentionally affected, albeit adversely, by a public and general act. We reject his arguments to the contrary and reject his challenge under the Sovereign Acts Doctrine.

exactly that in 1998 when it amended 11 U.S.C. § 523(a)(8)(A) to eliminate, retroactively, the dischargeability of student loans such as appellant's that have been in repayment for seven years or more. Congress left in place an undue hardship exception to nondischargeability, which appellant does not claim. Through its power to legislate on bankruptcies, Congress has the power to impair contractual obligations, even retroactively, and appellant has no superseding right to a discharge in bankruptcy.

### Contract Basics

To have a valid and thorough private contract, these are the basics to include:

- **The names of the parties:** The address of all parties can be at the beginning or the end of the contract.
- **Expected contractor services.** Make a detailed list to leave no doubt in the mind of either party. Although it is tempting to assume the duties are understood, it is surprising how many times they are not. Use common sense, otherwise the list of duties will be too detailed.
- **Client responsibilities.** The contractor may need to perform his or her duties, but cannot without your cooperation. List these expectations and requirements.
- **Time for performance.** When does the contract start, how long does it last, and how many hours per week or month are needed? Does the contract renew automatically until renegotiated?
- **Payment.** Is there an hourly rate, or does the contractor need to bill for services done? Is there an increase after a time period? When is the contract paid? Is it weekly, monthly and how long after receipt of the invoice? Are there bonuses for early completion?
- **Place of performance.** This can be an on-site location, in a person's home or in the contractor's home.
- **State and Federal Taxes.** Is the contractor or the client responsible for taxes? In the private and independent contract, the contractor is responsible. In an employment contract, the employer is usually responsible.
- **Fringe benefits.** A private or independent contractor cannot get benefits. Employee benefits in an employment agreement need to be detailed.

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- **Status of the contractor.** State clearly if this is a private, independent, or employment contract.
- **Other Clients.** Will the contractor work for others, or are you the exclusive client for a particular time period? If independent or private, the contractor will likely have other clients.
- **Assistance.** If the contractor has help, who pays that help?
- **Equipment and supplies.** If independent or private, the contractor provides some or all the equipment and supplies, while the employment contract can be either way.
- **Dispute resolution.** This is a significant issue because of litigation costs. If possible, resolve matters through mediation<sup>50</sup> or arbitration.
- **Standard closings.** Include these common paragraphs found in most contracts:
  - **Entire Agreement.** A statement that this is the entire agreement and that it supersedes or replaces all other agreements.
  - **Successors and Assignees.** The agreement cannot be assigned without approval of both parties, and conditions when it is assigned.
  - **Notices and Modifications.** All modifications must be in writing, and instructions of how they are delivered to the other party.
  - **Governing Law.** The agreement is made in accordance with the laws of the state in which the contract takes place.
  - **Counterparts.** Any fully signed copy is the same as the original.
  - **Waiver.** Waivers of parts of the agreement have time limits.
  - **Severability.** Any part unenforceable does not make the remaining contract unenforceable.
- **Date it is signed.**
- **Signatures.**

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<sup>50</sup>

See Appendix G. Sample Format 31.

### **To Contract or Not**

The average person does not often get involved with contracts. It seems an overwhelming task. Professionals are more likely to either create a contract, employ a paralegal or hire a lawyer to help them.

Contracts are not difficult to write. Most professionals use previously written contracts to follow when they create a new one. If you are able to write a business letter, writing a contract is within your grasp.

### **The Spiritual Side of Contracts**

Writing your own contract brings up many issues not normally addressed. It is almost a *spiritual experience*, a self-review as you consider how to word paragraphs to get what you need. Here you come face-to-face with your self-worth and values. Just how much should you charge for services, or pay for them?

Use the same in reverse. If someone gives you a contract to read, you might want to rewrite it, even to just simply dissect it. Reordering the paragraphs might give you insight into the deeper meaning of the words, or using an outline can clarify many garbled ideas. *That a legal professional writes a contract does not automatically make it right or worthy of your consideration.* If you do not understand strange sentence structure, reword it so it works for you. Prepare yourself for several revelations, and many questions. Even if you plan to review it with a lawyer, this exercise puts you on equal footing in the discussion. In fact, this is one of those moments where taking a new Trustee or a Beneficiary with you to discuss a contract with a legal professional helps give that person valuable Trust experience.

### **Commitment and Reality - Not!**

In our experience, people who avoid contracts are not people with whom you should conduct business. Some may come with fantastic ideas, and want to give you the opportunity of a lifetime through offering you a special deal. Tell them to put it in writing, or "Here is a contract, sign it and we'll do business." Many people fold when faced with committing to an "obligation."

Others have saved themselves headaches and heartaches by using a contract to chase away those who cannot deal in the real world and have no plan of getting involved in the "substance of transaction."

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### Marriage

Speaking of contracts, marriage is a business contract<sup>51</sup>. When falling in love many over respond to the massive dopamine rushing through their brain. Then, they get “hitched” before the business part of the marriage is settled. Getting married gooeey eyed is not recommended, although nature would have you dash in where angels fear to tread. As hard as it may be, sit down with the prospective partner to sort out joint finances. A review of property and who commits to bring home the cash before you tie the knot is essential. Otherwise getting more of what you do not need may occur.

An understanding of contracts gives you an idea of how many questions need answers before your blind faith leads you down the dark alley. Marriage is about money. You can have your love affair indefinitely, but entering a binding contract with your lover changes much about what could have been a wonderful romp through life. Now you are into your spouse’s problems, irresponsibilities, old habits and downright ugly past. You both have “baggage.” It comes along into the marriage. This includes the unresolved issues with family members and debts, whether financial or not, yet owed. And speaking of obligations of contracts, those old ones with family members are deep.

### Financial Contracts

These can be tricky, with much number crunching, interest rates and points when negotiating your mortgage, and all the strange lingo that comes with stocks and bond transactions can make your head spin. Most of us blindly sign. Not only is the print too small, but the paperwork overwhelms the mind. Despite all this, though, with a few pointers about contracts, you should be able to find those areas of most concern to you.

### Promissory Notes

Even promissory notes, the simplest form of financial contract, can be tricky. Again, the details are important. State the interest rate, any reasons for the loan—because you will forget why you loaned the money—and any other issues relevant to the matter. We recommend excluding the promissory note from bankruptcy or state payment of the full note happens on bankruptcy. If the borrower does not allow these terms, do not loan the money.

If you receive funds on a promissory note and the borrower claims bankruptcy, all the money he or she gave you can be claimed by the attorneys for payment of their fees. Take this into consideration when using promissory notes.

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<sup>51</sup>

Appendix J. Presentation 5.

### **Banking and Loan Agreements**

Shopping for the best deal from bank-to-bank can get you the best rates. Here again, though, you need to be sure that your best terms apply if the loan is sold to another bank.

### **Lease and Rental Agreements**

Use rental agreements<sup>52</sup> when residential property is put into Trust. If the Grantor still lives on the property, he or she generally needs to pay rent. In fact, as mentioned in Volume I, the best Trust situation for residential property is to have a rental agreement in place to ensure the ownership belongs to the Trust.

Further, if the Grantor remains on the property as caretaker, this saves the property from vandals. Some Trust companies suggest advertising for caretakers before the Grantor is allowed to remain on the property.

Use lease agreements when Trust vehicles are used by other than the Beneficiary listed on the Asset Holding Trust.

The Trustees sign the vehicle leases of third-party vendor agreements.

### **Miscellaneous Agreements**

Privacy, caretaker, management, administration, web hosting, secretarial service, and consulting contracts of all types are just a few of those found in the miscellaneous category. The Trust's basic contracts serve as a template to use to write other contracts.

### **Management**

This contract spells out what the Management Trust handles<sup>53</sup>. This is the central organization where the Board of Trustees manages. If there are several Trustees, they are likely to hold positions on the Management Trust as well as on one or two other Trusts being managed. Trustee combinations provide a sufficient mix between those experienced, adverse, and family members who serve as Trustees on other Trusts. To give you an idea of what functions a Board of Trustees handles, here is a partial list of responsibilities of any Board of Trustees:

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<sup>52</sup> Appendix G, Sample Format 34.

<sup>53</sup> Appendix G, Sample Format 30



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- I. The MANAGEMENT ORGANIZATION is responsible to handle the following areas of asset administration:
  - a. Fiduciary fees
  - b. Payroll administration
  - c. Legal issues
    - i. Correspondence
    - ii. Filings with county, state and federal agencies
    - iii. Consultation with legal experts
      - (1) Paralegals
      - (2) Trust consultants
      - (3) Lawyers
    - iv. Research
  - d. Tax matters, and dealings with tax authorities
    - i. Payroll Taxes
    - ii. State and Local Taxes
    - iii. Federal Taxes
  - e. Application of passthrough accounting and distribution methods and procedures
  - f. Investment administration for the following Trust groups (list).
  - g. Trust administration, including, but not limited to:
    - i. Board of Trustees meetings
      - (1) Location
      - (2) Agenda
    - ii. Hiring and training of Trustees
  - h. Real estate transactions:
    - i. Leases
    - ii. Rentals
    - iii. Mortgages
    - iv. Deeds
    - v. Titles
  - i. Insurance
    - i. Life
    - ii. Casualty
    - iii. Medical

- iv. Comprehensive
- v. Liability

### Quasi Contracts

We discussed Quasi Contracts in Volume I. These contracts are not written, but become real through mutual assent. They are not dependent on the agreement of parties but on the action within the transaction.

If you make a verbal contract with the roofer to repair part of your roof and you make a down payment, this is a quasi contract. The facts of the contract become obvious by the work and the money.

If you steal cable TV, you create a quasi contract by use of the stolen feed. This is why you can be prosecuted—there is unjust enrichment of one of the parties.

### Welfare Benefits

Another contract comes into being when one receives benefits. In law this is found under the subject of quantum meruit:

A right to recover in quantum meruit is based on a promise implied by law to pay for beneficial services rendered and knowingly accepted.<sup>54</sup>

With getting something for nothing, parts or all of the Bill of Rights may become void. This is particularly true when one accepts Welfare.<sup>55</sup> When receiving free benefits, the recipient cannot refuse the government's terms of service either.

Nothing is really free. This applies to receiving Beneficial distribution from a Trust. Once accepted, the Beneficiaries are beholden to the terms of the Trust Indenture under the laws of quasi contract and especially quantum meruit.

Study the art of contracts if you plan to organize and run a Common-Law Trust, or if you want to claim your divine right to be free.

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<sup>54</sup> *Vorth Exploration v. Chevron U.S.A.*, 787 S.W.2d 942,944 (tex.1990)

<sup>55</sup> Joe Cobb, "Welfare Rights; for a copy of the article write Joe Cobb. Arizona Libertarian Party .Postal Box 50777 Phoenix, AZ 85076-0777 <http://www.joecobb.com/blog/2007/07/23/welfare-rights>

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## Chapter 9: Your Piece of the Action

**T**here are two different Certificate classifications: Trust Capital Units (TCUs) and Units of Beneficial Interest (UBIs). Often confused and used interchangeably both in law and in different Trust types, we take this opportunity to clarify their separate uses. Through our experience with exchange processes, and many Beneficiary issues, we share with you the evolution. This is how both Certificates can work together.

Because a Private Trust can be designed by the Grantor, the ways to use the Certificates are up to him or her. By sharing our experience, we present some of the possibilities.

### **The Difference Between Capital and Beneficial Interest**

The Certificate process is the dividing line between an Irrevocable Common-Law Trust and an Irrevocable Statutory Trust. Only Trust Capital Units are found on both the Management Trust and the Business Trust. For the Asset Holding Trusts, both Trust Capital Units and Units of Beneficial Interest apply.

We feel that unless Beneficiaries express an interest in the Trust, or demonstrate maturity, they should probably hold UBIs instead of TCUs.

By the Management or Business Trust giving the Asset Holding Trusts TCUs, they become Beneficiaries and pass the distribution on to the holders of UBIs.

Also, you may put a friend on as a UBI Holder instead of a TCU holder. Further, the Grantor can specify that only direct descendants can hold TCUs, and that TCUs cannot be assigned to those outside the family, while UBIs may be more broadly applied.

### **The Name Tells All**

Capital is equivalent to corpus, and interest is equivalent to profit. The corpus becomes the principal and generates the profit. Cash out the principal, the working capital, and the profits cease. The Certificates holders of Trust Capital Units get both interest and

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a part of the corpus if and when it is dissolved, or if a distribution of corpus is decided by the Board of Trustees.

The UBI Holders only receive funds only when there is a profit. Cash out the principal, and the profits cease. In this case, the Certificate holders of UBIs will get a lesser distribution, or none at all.

### **Dissolving Corpus**

For example, the corpus of an Asset Holding Trust is residential property. When the home is sold, the corpus is liquidated. The Management Trust is the Trustee, usually holding up to 51% of the TCUs. The remaining 49% can be distributed or reinvested for the TCU Holders on the Asset Holding Trust. The majority of funds passthrough to Management Trust where funds gained from the sale can be put into a stock portfolio to generate a cash flow for the Management Trust TCU holders.

If there is a profit on the sale of the home because the real estate market increased over time, then the Board of Trustees can distribute the corpus plus the profit to the Trust Capital Certificate holders. The Asset Holding Trust, as a TCU holder in the Management Trust receives part of the corpus and part of the profit. From this, it makes a distribution to the Certificate holders of UBIs.

If an interest-bearing account produces a cash flow of \$2,000.00 a month, the TCU holders get their cut, and there is a trickle down to the UBI holders. Cash out the principal, and interest ceases.

This will become clearer when we review the Trust Certificate Registers in the next chapter.<sup>56</sup>

### **Exchanges and Transfers**

As mentioned previously, there are no Certificates for assets exchanged into the Irrevocable Statutory Trust. When people put assets into a Statutory Trust, they often pay a gift tax.

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<sup>56</sup>

In a corporation, assets can be exchanged for shares. When those shares are cashed out, the tax is due.<sup>57</sup> It is the exact same with TCUs in an Irrevocable Common-Law Trust. When the TCUs are cashed out, the tax is due.

If you are an Exchanger, the paperwork you received when you placed your assets into Trust will state the asset value. When you cash out your Certificate, the difference between the original value and the current value is the amount to report.

Units of Beneficial Interest do not require an exchange and may or may not have a cash-out value. This depends on the circumstances stated in the Indenture and what the Board of Trustees decides.

### **Not Tradeable**

If you hold a Certificate for 100 TCUs, the only buyer is the Board of Trustees. You cannot trade your share to your brother or sister, nor can you give certificates to your children. You can return them to the Board of Trustees, which may or may not reissue them according to your wishes, or you can sell them back to the Board of Trustees should there be sufficient cash flow in the Trust and the Board of Trustees and you agree on the value. This is a valuable option if you need funds more than you need your vested interest.

### **Units Allocated Incorrectly**

Proper unit allocation and implementation of the exchange process are presently not well understood. This is because the knowledge of how to set up a Trust properly has been lost. In most of the Common-Law Trusts, TCUs have been allocated incorrectly. In both Chapter 11 about Scam Trusts and Chapter 12 explaining the common formula of when a Grantor is taxable, it is easy to see how mishandled Certificates have been. It is a most basic error.

### **Expertise and Dedication**

The administration of the Certificate Register requires expertise and dedication.

It has often been our experience that many people who become Trustees are not aware of the time and commitment needed to learn the more subtle intricacies of the Common-Law Trust distribution system. Training materials are not readily available to the general public and so, the application of shared wealth within a Trust seems foreign.

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<sup>57</sup> *Burnet, Commissioner of Internal Revenue v. Logan* 283 U.S. 404 (1931)

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Before we take you into the details of a Trust Certificate Register and how it all works, we first will explore legalities about these Certificates, as many lawyers do not believe the exchange process is legitimate.

### Thumbs Down to Gift Taxes!

We examined the writings of one of the leading authorities on the subject of the Irrevocable Statutory Trust<sup>58</sup> looking for a better understanding of Certificates. The Irrevocable Statutory Trust seems more designed to gain tax advantages, but has no information about exchanges or Certificates. Mr. Turner's work is impressive, and anyone needing assistance with setting up an Irrevocable Statutory Trust should consult with him, or those who are of his ilk.

In a dialogue with a law firm about this subject, the idea of Trust Certificates was deemed illegal. They focused on payment of a gift tax. So we asked one of our legal researchers to delve into tax law to clarify the legal position of asset exchanges for Certificates, and how and when a gift tax is applied to this situation. We found some noteworthy data. Apparently, the entire idea of exchanging goods into either a Trust or a corporation is not so unusual. There are court cases where this issue has been decided, and where even large amounts of money have been discussed to the penny. The law firm which queried us stated that a gift tax is due at the point where the goods were placed into the Trust. We share with you the following words from authorities who ponder these tax items, and who also disagree with the law firm's opinion. We first establish the point of value. It is at the time the asset is put into a Trust:

Fair Market Value, for the purpose of the internal revenue law, is the price at which a seller is willing to sell at a fair price and a buyer willing to buy at a fair price, both having reasonable knowledge of the facts in the trade.<sup>59</sup>

On the Grantor's side, the Trust Certificates received for goods placed into a Trust have no reportable or determinable value to be declared. Continuing with the American National Bank case,

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<sup>58</sup> George M. Turner, *Irrevocable Trusts*, Third Edition, Thompson/West 2005

<sup>59</sup> *American National Bank of St. Joseph v. U.S.* 92 F Supp. 403 [4,5] (1944)

Property received in exchange for other property has no “fair market value” for the purpose of determining gain or loss resulting from such exchange when owing to the condition of the market, there can be no reasonable expectation that the owner of the property, though wishing to sell and any person wishing to buy will agree upon a price at which to trade unless one or the other is under some peculiar compulsion.

When the Trust Certificates are cashed out, is when the value is ascertained. The IRC recognizes that a taxable status exists when transferred into the Trust Organization, but any tax payment is deferred until distributed from the Trust Organization to the Beneficiaries.

In the American National Bank case, the judge rendered his opinion as follows:

It is my conclusion, therefore, that the assets received by the Trustees held no determinable market value when they were received in 1936, and no determinable market value at any particular period subsequent thereto, prior to 1944, and that the plaintiff was entitled to take credit in 1944 as a capital loss, the difference between \$22,100.00 the cost of its stock, and the sum of \$7,870.26 received by it as a result of the liquidation of the exchanged assets. It is so ordered.<sup>60</sup>

To further our legal research, we took a hard look at an often quoted case, *Burnet v. Logan*<sup>61</sup>:

No tax is assessed on the conveyance of property to a corporation [or a Trust] because the exchange constitutes a tax-free trade and exchange for an unknown realized gain or loss.

Trust Certificates which have only a contingent future interest of indeterminable value are not taxable. The tax is not evaded or avoided, it is merely deferred.

A promise to pay indeterminate sums of money is not necessarily taxable income. Generally speaking, the income tax law is concerned only with realized losses, as with realized gains. . . From her mother’s estate, Mrs. Logan obtained

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<sup>60</sup> *American National Bank of St. Joseph v. U.S.* Ibid.

<sup>61</sup> *Burnet, Commissioner of Internal Revenue v. Logan* 283 U.S. 404 (1931)



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the right to share in possible proceeds of a contract thereafter to pay indefinite sums . . . . The statute definitely exempts bequests from receipts which go to make up taxable income.

Not to be deterred from our search, we found more:

A voluntary contribution by a taxpayer to a corporation [or a Trust] of which he is the sole owner, held not a gift subject to gift tax.<sup>62</sup>

We feel these court case references might satisfy those who have wondered about the finer points of the tax benefits inherent in the creation Of an Irrevocable Trust.

We must warn you, though—once items are placed into a Trust, removing them can create exceptionally aggressive tax consequences. This, of course, is the reason the Irrevocable Common-Law Trust is perpetuated. When you can use the asset without either the tax consequence or the responsibility, why take it out of the Trust? This also encourages Trustees to keep the assets together and to make the Trust grow. The option to cash out assets always exists. Do not expect the Trust to always make a profit, sometimes it is necessary to cash out corpus to make it to the next round of good luck, or to make the magic of asset multiplication happen again.

In the Common-Law Trust, though, the Beneficiaries can use the physical assets, e.g., home, cars, furniture, without tax consequences. Cash distribution is taxable to the Beneficiaries, but the Beneficiaries protect the assets by receiving the distribution and paying the taxes. How so, you ask? When the 1041 tax return is filed, and no K-1 distribution is reported, no matter how small, the I.R.S. quickly recognizes a fraudulent Trust. This sends up a red flag! The irrevocable Trust is a passthrough accounting system. Choose your counselors wisely, for in this matter a mentor is needed.

We hope you are ready for the next leg of your journey. We have designed the following chapter in story format to make a complex matter as simple as possible.

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<sup>62</sup> *Robert H. Scanlon, Petitioner, v. Commissioner of Internal Revenue*, Respondent, Docket No. 9020, October 18, 1940.

## Chapter 10: Mysterious TCUs

**A**lthough we focus on the Management Trust and its Certificate Register, you may want to refer to Chapter 4 on Trust Structuring to refresh your understanding of the Trust layout.

### Register Tells All

For now, we focus only on the Trust Capital Unit Certificates. The Certificates reflect units given in exchange for assets or given to Officers and Beneficiaries who have not joined in the exchange transactions.

The TCU Register is complex, and the more changes in the Trust group, the more sophisticated the Trust Certificate Register becomes. Refer to Appendix K, Sample Format 44. Follow this Register to see the transactions over the years. Note how funds added to the Trust affect distribution to the Trust Certificate Holders, as well as the various uses of TCUs.

To make this easier to understand, we dramatize the story of the Register to make the people and entities involved seem more real.

Within this group, you see how and why TCUs become inactive and active, and how Beneficial Distribution happens.

### The Grantor

On October 10, 2001, Terrance A. Wilson, as Grantor, set up the Sherman M. Patterson Family Trust. In his late 40s, this well-traveled, red-haired, energetic man had a rounded education. Keenly interested in preserving assets for his family to avoid probate and to minimize taxes, he put some of his wealth into the Sherman M. Patterson Family Trust. He previously set up other modalities to protect his family, including two other Trusts for his children.

With an available 500 TCUs in the Patterson Trust, Mr. Wilson received 1% of them, five, for starting this asset-preservation arrangement. In addition, he placed \$100,000.00 cash, plus rental income and a stock portfolio, into the Trust and thus

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became an Exchanger. Although the rental income is assigned to the Trust, the rental property is in a separate Asset Holding Trust. This initial funding sets up the Corpus to produce the cash flow and becomes the accounting baseline for the Trust. Mr. Wilson received Certificates No. 001 and 002 giving him 65 TCUs for his contribution to the Sherman M. Patterson Family Trust. Because he put funds and other assets into the Trust, Trust Certificate No. 001 and 002 are active. They are identified by the words “Grantor” and “Exchanger” after his name, as opposed to identifying TCUs given to Trust Officers. TCUs receive payout per the percentage they represent when the Trust makes a profit.

### **The First Trustee**

Mr. Frank C. Ellis, an elderly gentleman with white wavy hair and a gentle disposition, became the First Trustee. For this he received 125 TCUs, establishing him with vested interest and satisfying the I.R.S. §672 where the adverse Trustee must have a greater interest in the Trust than the Grantor to qualify the Sherman M. Patterson Trust as an Irrevocable Trust. If Mr. Ellis had fewer TCUs than Mr. Wilson, this would be a Revocable Trust and Mr. Wilson would hold more control than Mr. Ellis, thus having the authority to fire him. If the energetic Grantor kept that power, he would also be responsible for the income tax of the Trust.

Mr. Wilson asked Mr. Ellis to become the First Trustee. Mr. Ellis only agreed if he could add a family member as a Beneficiary. Mr. Wilson agreed if the person selected became a holder of Units of Beneficial Interest instead of a TCU holder. They agreed on ten UBIs for Mr. Ellis’s granddaughter She would belong to the Asset Holding Trust, Terran Blue.

Mr. Ellis, as First Trustee, becomes responsible to hire all other Trustees who join the Trust after him. The Grantor, Mr. Wilson, now has no authority to hire or fire any other members of the Trust group. The elderly Trustee is also obligated to take the cash flow created by this beginning contribution and multiply it for the Beneficiaries. If Mr. Ellis is not skilled in this task, then he may choose to consult with professionals (or rely on other Trustees who have the expertise).

### **Active and Inactive TCUs**

At the time the Trust became settled, the mild-mannered First Trustee did not put any funds into the Trust. His Certificate No. 003 for 125 TCUs remained inactive. That is, he only receives a payout if the original Corpus or a portion of it is cashed out and the

Trust dissolved. Recall the original Corpus consisted of \$100,000.00, rental income and stock portfolio. This means if the stock portfolio is sold, the funds are put into a checking account. This cash is distributed to the Trust Capital Unit Holders instead of reinvested into other avenues to produce an increase to the Trust. There are only a couple of reasons to do this, not covered here. Note, though it is not a likely event since obviously Mr. Ellis, who as Trustee holds a greater percentage of TCUs than the Grantor, would receive more funds than Mr. Wilson.

If the stock portfolio continues to provide a cash flow, it contributes to the overall profit. Mr. Ellis receives a distribution for his 125 units representing 25% of profit if he has activated them by putting his own funds into the Trust. Although a Trustee can have 51% of the interest in a Trust, in this case, because there are other members of the Board of Trustees, the 51% (251 TCUs) is shared among other Trust Officer.

### **The Beneficiary**

Without a bona fide Beneficiary, there is no Trust. Mr. Wilson named Terran Blue Trust to receive a Beneficial Distribution. The Terran Blue Trust, named after a vacation spot, is where the Wilson family often visited when the children were growing up. This Trust's Beneficiaries are two of Mr. Wilson's children and Mr. Ellis' granddaughter. Terran Blue Trust, by virtue of holding the TCUs in the Management Trust, Sherman M. Patterson Family Trust, receives a distribution and passes it through to the UBI holders.

### **Activation of Officer TCUs**

As time passed, the Board of Trustees decided to activate one Trust Capital Unit per year of service for all Board Members, also referred to as Trust Officers, whether or not they added funds to the Trust. In this particular case, the Board of Trustees, in consultation with the Grantor, realized that without the Trustees performing their duties, the benefits of asset protection and tax advantages would not apply, nor would the assets multiply. Whether or not the Trustees contributed financially, they added to the value of the Trust.

The merit of the fiduciary becomes more obvious as time passes. Although soft-spoken Trustee Ellis receives at year-end 2% of Beneficial Distribution, this new bonus gives him an even greater incentive. As the cash flow increases, so does his percentage. The Trustees may receive an hourly remuneration to supplement their compensation, depending on the cash flow of the Trust. They can also have active TCUs.

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Further, Mr. Ellis, as well as the other Trustees, became more valuable as events occurred which they handled. They studied legal cases involving Trusts and grew more aware of proper accounting procedures and protocols. Having performed dutifully for the Beneficiaries, activating one Trust Capital Unit per year for these Trustees was an obvious decision.

### **Fiduciary Fees**

Three years from the time the decision to activate the TCUs occurred, Mr. Ellis received three active TCUs. For example, if the initial corpus produced \$7,000.00 a month to the Sherman M. Patterson Family Trust, and all 500 TCUs are assigned, then each Unit becomes valued at \$168.00. So Mr. Ellis receives \$504.00 a month, but as time passes and assets multiply, this can roll into a much larger sum.<sup>63</sup> The Board of Trustees or the Grantor has discretion about how much of the profit goes to distribution. Although \$168.00 per unit could be shared, it may be valued less to use funds for other projects.

Because the initial funding of the Trust did not produce a large Trustee year-end percentage, Mr. Ellis and other Trustees charged an hourly rate. As the Trust amasses more funds, thus increasing the year-end percentage distribution, the hourly rate decreases.

### **The Second Trustee**

Following careful screening, the First Trustee hired Kriss L. Heff, a young stout paralegal with a sunny disposition and thick glasses, as the second Trustee. Because he had much less experience than the senior Trustee, he received 50 TCUs. They were initially inactive. He served for three years, learned the intricate accounting procedures, and received three active TCUs. At the end of every year, he also receives 1% of Beneficial Distribution.

### **The Protector and General Manager**

The Trust Protector, Muriel J. Allen, a business consultant with long dark curly hair, received 1% of the TCUs, and Courtney S. Brown, an overactive salesman, became the General Manager and received 1% of the TCUs. It was uncertain how long he would be able to serve and how much time he could commit. He resigned three years later,

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<sup>63</sup>  $\$7,000 \times 12 \text{ months} / 500 \text{ TCUs} = \$168 \text{ each Unit. Times 3 Units} = \$504.00 \text{ per month}$

returning his five TCUs, shown on Certificate No. 006 to the Board of Trustees. In that time he helped set up a partnership, adding \$4,000.00 a month to the cash flow.

### **The Executive Secretary**

Ms. Anita L. Willon, the Executive Secretary, received Trust Certificate No. 007 for 30 TCUs in March of 2002. These were inactive.

Involved with paperwork and management details, she spent more time than others on Trust work. She realized the potential of the various investments of the Trust and saw the assets grow. Three years later, she became an Exchanger, adding funds to the corpus of the Trust. She received another Certificate, No. 014. Being a member of the Board of Trustees, she also received three active TCUs of her original Certificate No. 007.

### **More Exchangers**

The Wilson Amber Trust, set up by the Grantor's wife for their children in 1980, added \$5,000.00 to the initial Corpus for four TCUs. The Blue Crystal Management Company, owned by Mr. Wilson's father, became an Exchanger for five TCUs when it added another \$30,000.00 to the Corpus. The inconsistency in how many TCUs given is per negotiation with the Board of Trustees. Timing and value are other reasons.

### **Successor Trustee and Grandson**

Mr. James E. Hughes, a grandson attending college, became a Successor Trustee for 50 TCUs in May of 2004, but remained only until September 24, 2004. He then surrendered 25 TCUs to the Board of Trustees when he left the area to follow a medical career. For his service to the Trust, because he was a direct descendant of Mr. Wilson, and because the Trustee training experience he received while helping the Board of Trustees will serve the family well, he kept 25 inactive TCUs.

Note that later a split occurs, and a symbol is made on the Register. The 25 TCUs are not to be confused with those activated yearly for the other Trust Officers. At this point, none of these 25 is activated.

### **The Third Trustee**

Because of his real estate background, Thomas J. Holden became an another Trustee September 22, 2004 and received 50 TCUs. With the increased cash flow from cash-producing investments, this new Trustee bought both vacant land for speculation and an apartment building to add to the growing cash basis. The apartment building was

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transferred into an Asset Holding Trust managed by the Sherman M. Patterson Family Trust, while the rental payments from the apartment units came directly to the Trust. The young paralegal Trustee handled the accounting.

After one year, Mr. Holden received one active TCU.

### **Training the Teenager**

Jennifer Stunner, the 15 year-old niece of Mr. Wilson, became Successor Trustee in training on February 8, 2005 for ten TCUs and aided the Board of Trustees with various facets of Trust management. As a diligent student interested in the family profits, her newly acquired Trust business knowledge ensured a future for the Trust group.

Alto Management, a business of Jennifer's father, added more money into the Trust coffers in May of 2005 and received TCUs, as shown on the Trust Certificate Register. Note, Successor Trustees have no signature or other authority until they become Trustees.

### **The New Beneficiary**

In 2005, the Board of Trustees gave to Mr. Wilson's first grandson 20 TCUs.

### **Splitting TCUs**

At this point, the original 500 TCUs were nearly all assigned. The Board members voted to do a three-to-one split, yet the current TCU Holders would get only a two-to-one split. This gave enough extra TCUs unassigned to allow for the continued growth of the Trust.

When Certificate No. 011 is split 2 to 1, the 25 Active TCUs appear in the Quantity column and a note about No. 011 with No. 027 appears.

### **Family Involvement**

The Living Trust and other Statutory Trusts do not have TCUs. As you can see, this extra feature plays a key role in Trust management, flexibility and distribution. The family can become more involved with the growth of the Trust. The ownership of the assets remains with the Board of Trustees. The vested interest in developing a future for posterity and shared revenue becomes a matter of expanding fascination—especially when those checks keep coming to the Beneficiaries.



## Transfers and Exchanges

The TCUs given for assets exchanged into the Trust happen through paperwork created by the Exchanger to transfer legal title to the Board of Trustees<sup>64</sup>. The Exchanger then receives a Certificate. The Board of Trustees settles the number of TCUs through negotiation with the Exchanger. The Certificate gives the right to receive distribution and is a financial instrument. Any other rights, determined by the Grantor, stem from the Trust Indenture. Each Indenture is unique to the Grantor's wishes. This is why "boilerplate" documents for a Trust usually are not enough to handle the individual needs of a family.

## Beneficiaries Are Serious Business

The Exchanger, the one who puts assets into a Trust, always names the Beneficiaries. Besides gaining the benefits of asset protection, the real reason to place funds in a Trust is to care for the Beneficiaries, who may be a spouse, children, aunts, uncles, and nephews. They, also, may not even be related. Because the Irrevocable Common-Law Trust is a private contract, even friends can be listed as Beneficiaries.

Because of the serious nature of naming Beneficiaries, they are not easily removed. This is not the place where you play "musical chairs." Named Beneficiaries are part of the group. The Board of Trustees intends to keep them as Beneficiaries.

Trust Certificate Holders are Beneficiaries whether or not the Units are active. This fact will help you to understand several court cases where Trustees are referred to as Beneficiaries. In reality, they are the only Beneficiaries. Under the Trust Contract (Indenture) with the Grantor, they agree to distribute funds to the people named by the Grantor. The word Indenture means "a contract binding a person to work for another during a given time."<sup>65</sup>

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<sup>64</sup> See Appendix B.

<sup>65</sup> *Webster's New World Dictionary of the American Language, Second College Edition*, William Collins + World Publishing Co., Inc., Cleveland • New York (1968)



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### **Pooled Resource Management**

As the Trust invests, and perhaps sells acquired residential property, the profits can be returned to the pooled funds to produce a greater cash flow. A portion or all the profit made will be distributed to the Grantor and the other Trust Certificate Holders who have active Units. The Certificate holders do not need to accept the funds. They can assign them to others. For example, if the Grantor does not wish to receive funds from the Trust, he or she can redirect the payout to another Trust member by writing the Board of Trustees. Further, the distribution can be reinvested.

### **Corporations, Assets and Shares**

A Corporation can give a person shares of stock for assets given to it. We know of one case where a grand piano was exchanged into a corporation for shares. The piano was tagged as being the property of the corporation, and housed in the home of a corporate officer. When an IRS Agent came by planning to confiscate the piano, the corporate tag prevented the agent from taking it, as it did not belong to this corporate officer but to the corporation.

The corporate shares allow the holders to vote about corporate decisions. This is known as having voting rights and sets up ownership. Any funds the corporation makes become a tax liability to the shareholders, who also pay tax on any dividends they receive—double taxation.

Contrary to this, the TCUs given to someone who has exchanged assets into the Trust, have no voting rights. That is, the Trustees now own legally whatever is in Trust. The person holding the TCUs has no say about the disposition of the assets, unless the Grantor holds that power within the Trust Indenture. When there is a distribution, there is no double tax.

### **Buying the Trustee Position**

In larger Trusts, it is proper for a Trustee to buy his position and thus seriously invest in the Trust when becoming a Trustee. In this particular case, the Trustee may get two-for-one TCUs for personal money invested, may need to buy the TCUs at their current price, or may elect to waive annual fee and apply same to TCU activation. The object here is to ensure the Trustee has enough motive and holds major vested interest, not the Grantor. Not wishing responsibility for the taxes or liability for lawsuits, and to ensure the future of his family, this works to the Grantor's advantage.

With Beneficiaries, it is more suitable to offer incentives for them to become more active in the Trust or for them to make certain achievements in their lives, before giving them extra UBIs or TCUs.

### Constant Changes

As the Trust grows, there are many changes that occur naturally. Through marriage the female Beneficiary often changes her surname. This requires the original Units to be returned to the Trust and reissued under her new name. Adding children to the Trust often means more Units issued. As stated earlier, Trustees may also come and go, Certificates may be lost. As mentioned earlier, there may be those Officers and Trustees of the organization who decide to activate their TCUs. As shown, there are also times when a split occurs creating a two-for-one or greater split.

### Distributions

By using the equity in the Trust, a rough estimate of the TCU value settles a starting point for exchange negotiations or to cash out the TCUs.

The Grantor may decide the distribution value of the TCUs if that power has been kept without affecting his nonownership status.<sup>66</sup> The Grantor may have also held the power to decide corpus and income to build up the assets in the Trust.<sup>67</sup> Where the Grantor has a power to allocate receipts and disbursements as between corpus and income, even though expressed in broad language.<sup>68</sup>

The Board of Trustees or the Grantor controls the percentage and the frequency of the payout. The objective of the Irrevocable-Common Law Trust is to pay zero taxes, so the Beneficiaries pay the tax. Please note, the Beneficiaries only pay tax if they are subject to U.S. Tax Laws. They might not be subject because they are either Beneficiaries in a foreign country or they are Charitable Organizations. Beneficiaries in foreign countries who are not U.S. Citizens, fill out a 1040NR (Nonresident Alien) after receipt of the K-1.

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<sup>66</sup> *IRC §674(b)* The power to distribute, apportion, or accumulate income to or for a Beneficiary or Beneficiaries . . .

<sup>67</sup> *IRC §674(b)(8)* Power to allocate between corpus and income.

<sup>68</sup> Morton Freilicher, *Estate Planning Handbook With Forms*, Prentice-Hall, Inc. Englewood Cliffs, NJ (1970).

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### **Ignorance and the Red Flag**

Banks and the IRS cannot differentiate between one Trust type and another, as documents submitted to financial institutions generally do not identify the nature of the Trust. Unless paperwork submitted describes a Trust as an Irrevocable Common-Law Trust, then it appears to be just like any other kind of Trust.

An improperly administered Trust becomes identified by how people fill out their personal tax return information, and how the Trust paperwork is submitted to the IRS. If the paperwork is filled out correctly, it appears the same as any Statutory Trust, and thus transparent. Uneducated in tax processes, those with scam Trusts incorrectly fill out the paperwork. Once the IRS suspects the use of a “Common-Law Trust” they assume most people involved with it have no idea how both the administration and tax laws apply. Chapter 12, about Screwball Trusts, supplies the details of these mistakes.

Failure to file county paperwork correctly for homes in Trust, also gives a clue that something is amiss. Having the property under the Trust name with the Grantor as Trustee, just does not work if one claims the Trust is irrevocable.

If the Grantor has a strong enough control of the family, the Irrevocable Common-Law Trust can be a dynamic tool to share wealth. The status of Beneficiaries does not change when the Grantor passes. When properly trained, the Trustees will have control and provide equitable disbursements. When the Grantor is no longer able to contribute, the Trustees take full responsibility and assume all activities. The common fears and frequent mental disorders of old age will not threaten the assets, as the Trustees continue whether or not the Grantor is involved.

## Chapter 11: Protector—Judge and Jury<sup>69</sup>

In some Trusts, Protectors have stepped in to mediate and resolve disputes. Thus, through the simple medium of personal communication, they have averted further complications. A Protector chosen by the Grantor can do much to give the Grantor peace of mind and help a smooth transition from ownership of material assets to ownership of TCUs.

George G. Bogert discusses how a third party can be given the power to remove a Trustee.

There is no reason to suppose that a power of removal could not be given a disinterested party, nor why it might not be made exercisable without cause. However, it would seem that such a power would be held under a fiduciary obligation to exercise it only in the interest of the beneficiaries.<sup>70</sup>

### First Line of Defense

The purpose of the Protector is to be the first line of defense to keep the Trust safe from litigation stemming from questionable conduct by the Trustees or from challenges by the Beneficiaries. Although the Trust Protector is not a member of the Board of Trustees, as part of his or her continuing training, invite the Protector to attend some of the Trust meetings.

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<sup>69</sup> See Appendix A, Sample Format 2 for suggested Indenture wording to include a Trust Protector.

<sup>70</sup> George G. Bogert, *The Law of Trusts and Trustees, Revised 2<sup>nd</sup> Edition*, Section 511-550, St. Paul, Minn. West Publishing (1993), pg. 30.

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If the Trustees take actions appearing contrary to the instructions of the Grantor or the Trust Indenture, whoever first notices the conflict may call on the Protector to review the facts and, if considered necessary, to intervene. The degree of intervention depends on the terms of the Indenture<sup>71</sup> and the severity of the possible breach. It may include removal of a Trustee or even legal action. Appointed by the Grantor, the Protector should not hold any more than 1% of the TCUs, if the Grantor so chooses. The Protector should be beholden to the Beneficiaries on behalf of Grantor and not so heavily invested in the Trust, his or her loyalty is split if there is a dispute between the Trustees and the Grantor.

### **The Watchful Eye**

Set a Trust up with enough checks and balances. Although signature power belongs to the Trustees, the Grantor can often review the accounting, or even act as the accountant. Ideally, two Trustees should sign all the checks, and act as a watch on each other. The real test, though, is just how conscious and involved the family becomes. These are the people who receive the overflow from the Trust. Here lies the secret of most everything in life—who is paying attention? This is why the Protector becomes intrinsic to the Trust's unfolding.

### **Who Cannot be a Protector?**

The person with the power to dismiss a Trustee cannot personally gain from the act. Although there should be an incentive interest in the Trust, make it one percent or less. Protectors cannot make their children Beneficiaries because the Protector may have a motive to dismiss a Trustee to replace with one who favors his children.

The father or another family member of the Grantor could be a Protector, if he or she can be trusted to not favor any of the Beneficiaries and if this family member has enough education about Trust responsibilities.

After gaining enough experience about Protector realities, we find the more professional the Protector, the safer the assets.

Oddly though, sometimes the most troubling situations come from Grantors. In their old age, some may lose their focus and the intent of the Trusts. Sometimes, they fire Protectors for no reason at all. Not thinking, they now hire friends, thoroughly incompetent to fire a Trustee. Because of the ignorance of the newly hired Protectors,

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<sup>71</sup>

Appendix A, Format 3

this causes significant and trying troubles with the Trusts. To prevent this, we suggest putting into the Trust Indenture definite requirements and standards for the Trust Protector.

To further deter a Grantor from acting against competent Trustees, the Trust Protector may be required to have any of the following handled prior to being able to fire a Trustee:

1. The support of one other Trustee
2. The support of two-thirds of the Trust Certificate Holders:
  - a. By number of Units, or
  - b. By number of Holders
3. Documented evidence of the breach of the Indenture

For a thorough treatment on the Trust Protector's duties and the dangers inherent, we suggest reading an article on the Internet posted by the Law Firm of Bove and Langa, P.C. It specializes in Trust and Estates.<sup>72</sup>

Also, please refer to Table A - Relationships, found in Chapter 4, Building Blocks of the Future. This chapter is about Trust Structuring and outlines the Protector's relationship matrix in the Trust.

### Experience

A professional Trust Protector wrote the following. He is a lawyer who has turned mediator. We have found he has exceptional abilities to get people with different points of view to work together for the same objectives. We asked him to share his philosophy of mediation, to let people know how he performs, and why he is so interested in the entire field of dispute resolution. The following are his words:

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<sup>72</sup> Alexander A. Bove, Jr., Esq. and Melissa Langa, Esq., "Peter Protector in Trust Neverland—The Real Story of the Trust Protector," *Massachusetts Lawyers Weekly*, March 10, 2003; Bove & Langa, P.C., Ten Tremont Street, Suite 600 Boston, MA 02108 617.720.6040 Voice, 617.720.1919 Fax <http://www.bovelaw.com/archive/Real%20Story%20Trust%20Protector.pdf>.

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### **Trust Protector and Mediation Skills**

#### **Introduction**

Long before a Protector needs to terminate a Trustee for violation of the Trust Indenture use meetings and mediation to resolve conflicts.

#### **Disputes**

It would be ideal if human relationship would be smooth, cooperative and harmonious. I guess we would have to remove the “human” from that sentence if we wanted to achieve the ideal. The fact is, disputes arise in every area of human life.

#### **What Dispute?**

It may sound silly to say, but the first step is to recognize that a dispute is going on. Sometimes, it is not so simple to see, because just about everybody in the world acts with both open and hidden agendas.

#### **Mediator First, Lawyer Last**

That said, what might be the next step to take after the dispute is identified? There are many answers to this question. One of them is, when the dispute is already lawsuit-threatening OR already in litigation, find and hire a professional neutral, like a mediator, to help nip it in the bud. This would be a good place to start to settle differences before both sides of a dispute telephone their attorneys (unless, of course, the lawyers recommend mediation to their clients).

#### **Definite Cost Savings**

Mediation is much more often than not a successful way to resolve disputes. It is a cost-effective way to avoid lengthy, emotion and energy draining lawsuits.

#### **The Real Deal**

I've been a professional neutral for eight years. I'd like to share a story with you to show how mediation can work.

### **Damage Control**

An art dealer, who spends much of her time traveling throughout the southwestern United States to locate and buy original oil paintings from the area, sold one of them to a first time customer. The customer's personal check came back from the art dealer's bank marked "NSF." When she finally reached the customer on the phone, he told her he did not want the painting after all. A week later, the painting came back, damaged, to the art dealer.

### **Absolutely NOT!**

Both sides were stubborn in their positions when the case came to me for mediation. The art dealer demanded the difference between the original sale price and what she eventually sold the painting for, plus the cost to repair it. The customer said this was not Southwest art, he did not want it and he owed her no money.

### **Oops, Well Maybe . . .**

My first job as mediator was to see if the parties could agree on something. I had the art dealer show the customer the bills she paid to repair the painting. This prompted the customer to agree to pay that sum.

### **Profits and the Cost of Litigation**

I then took the art dealer and her attorney into another room and asked them how much she had paid for painting. It turns out she made a profit on the completed second sale. She thought she was entitled to get and keep the higher profit from the first customer. I explained to her about the risks of litigation and the costs of trial. How it works is this. There is no way of knowing how a trial will come out, win, lose or draw. Also, much of the time when a party to a lawsuit pays for expert witnesses and pays attorney's fees and other costs, then even a victory will seem negligible. In other words, the odds are never good that any party will be put back in the place he or she was before the problem began, in terms of dollars and emotions.



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### **Let's Wrap it Up**

I suggested that any added money the customer was willing to pay in this negotiation would come to her cost and risk free. She and her attorney then allowed me to get the best offer I could get from the customer. A few trips back and forth between rooms resulted in a full settlement.

### **Do I Have A Choice?**

Not everyone knows the “ins and outs” of mediation and arbitration. For example, most people don't know that they can hire a professional mediator long before they need to hire an attorney to handle a dispute. In fact, it is to everyone's advantage to do so.

Since it is difficult to get through life without confrontation, one of the best assets one can have is a knowledge of when to use a mediator, and when to call a lawyer. The general rule is, call a mediator first.

### **How I Got into This**

After practicing law in a conventional way for some twenty-five years, I came to realize the courts, while fair and just in some ways, produced stress for everyone involved. That would include the parties to a lawsuit, the attorneys, the staff in the law offices, the judges and the court staff and just about everyone else who has anything to do with courts. I spent the next ten years giving lectures and writing articles about alternatives to taking disputes to court.

### **I Found My Home**

This led me to do the work that makes me most happy and most effective—helping people resolve their disputes. It is called “Alternate Dispute Resolution,” which includes arbitration and mediation. The primary idea is get people to the table sooner rather than later, reduce the cost of having the dispute resolved and getting the problem behind them. I love feeling satisfaction when I see the pressure come off folks when their disputes get resolved. That's my work and that's my passion.

### **My Wish**

I wish a life free from disputes for every person who reads this. If a dispute does arise, consider mediation as a simpler and quicker way to resolution.

Although this is the experience of a professional in mediation, one does not need to be a professional to be a Trust Protector. If the Trust Protector cannot resolve a disagreement, a professional mediator can always be called.

### **High-end Professionals**

We suggest though, that Trust Protectors be of a professional caliber. When there is a need to settle a serious dispute, one skilled in legal, accounting and mediation matters can help.

Trust Protectors can be law firms, as well as professional accounting organizations. We can also recommend a close family member who has enough business experience to be effective should the going get rough.

Although the Trust Protector is rarely needed, when this critical ability is called on, he or she steps in as an effective final authority. Often, just the mere threat of calling the Trust Protector does an effective job of curbing any “strange” behavior.

### **Qualifications**

The below list represents the ideal background of a Trust Protector:

- More than 10 years of business experience
- Negotiation/mediation skills
- Able to read legal documents, such as contracts
- Good writing skills
- Organized and responsive
- Flexible Schedule

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- Easily reachable by telephone
- Preferably located in the same general area as the Trust
- Duties and Obligations

Tell the Protector about the specifics of the Beneficiaries and your wishes. It can be that you have a troubled child, but no intent of ever separating the child from the Trust Group. Other members may often complain, and the Protector responds to find a solution. The solution, though, is to include, not exclude, the child.

To keep the Protector up-to-date, he or she should receive periodic copies of Trust Minutes, and attend a Board of Trustees Meeting once or twice a year. Invite the Protector to join in pending disruptive matters. Becoming involved in the early stages may avert a problem.

### **Details to Know**

For this example, the Protector is a lawyer. Usually he or she will have little to do, other than to keep occasionally up with the general hum of the routine Trust business. Involvement in details is not necessary.

When a Protector becomes involved with a Trust group, that person needs to have some or all of the following information:

- Legal Name of the Trust and a copy of the Trust Indenture
- Background information on key family members.
- Red flags, such as addictions, tempers, tendency to lie, criminal behavior and, of course, the knowledge of any talents of those involved in the Trust.
- Trustees' backgrounds, and why they were chosen.
- Financial report and banking locations. Because the Trust Protector can remove a Trustee, he or she may need to go to the bank to remove a Trustee from the checking account(s).
- The time and date of the next Board of Trustees Meeting so he or she can meet the Board members.

- The Grantor's priorities and expectations

### **Fees, Retainers and Compensation**

In the collective experience of many who have contributed to *The Art of Passing the Buck*, the Trust Protector intervention has happened only a couple of times. In one case, it was tricky, as an Exchanger became vicious, and in the other case, mediation resolved the problem.

Because the odds are against using the Protector, we found that an annual retainer covering one hour of time works sufficiently after the initial setup of the Trust. This is because when a Trust Protector acts for several Trusts, most of them never need the service. This one hour of time for each Trust equals an up-front fee for doing little to nothing, although it is likely the Protector spends one hour in a Board of Trustees meeting. Should there be serious concern if the Grantor wants to fire the Trustees, then the Grantor directly pays the Protector; otherwise, there is a conflict of interest.

Billing, though, is by Trust. Any services over the one hour are paid by the Trust needing the support or by the Grantor if there is a dispute with the Trustees.

### **Settling Disputes**

Involve the Trust Protector if pending litigation threatens the Trust. He or she should interview all parties. The objective is to avoid the courts. Privacy, is not guarded when Trust documents become public and get filed as part of litigation.

If the Trust Protector is not a lawyer, or the Trust Protector feels unqualified, then involve the Protector in getting a lawyer. Should the dispute be between the Grantor and the Trustees, the Trust Protector's highest priority is to protect the Trust and its Beneficiaries.

### **Dismissal of A Trustee**

This is no small matter. The Trustee may have risked the privacy, financial stability of the Trust, or has shown himself or herself to be untrustworthy and cannot, thus, continue to work in the capacity of Trustee.

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### *Compromised*

In just about all cases, Trustees resign when compromised<sup>73</sup>. The problem, though, becomes much greater when there is a major financial consideration. In larger Trusts, Trustees can earn upwards of half a million dollars a year. In this case, they may fight to keep their position. The Trustee can hire a lawyer to defend him or herself. This becomes messy business, and again involves the courts, which should be avoided.

### *Signature*

The easiest way to stop the power of a Trustee is to remove the Trustee's signature from all Trust financial accounts. Making said Trustee powerless to conduct business neutralizes that person.

We showed a bank's legal department the Trust paperwork allowing the Protector to remove a Trustee. It recognized the documents gave the Protector the authority<sup>74</sup>. The legal department, though, is uncomfortable with the prospect of getting involved, and hopes the paperwork is never used.

### *Procedure*

Accusations will not cause termination of any Trustee. There needs to be enough investigation and documentation to build a solid case. It is not uncommon for Beneficiaries to be upset with the actions of the Trustees. Beneficiaries, not privy to the myriad financial details of the Trust's finances, have incomplete information. Keeping this in mind, the Trust Protector is likely to believe the Trustee first, the Beneficiary second and work toward better communication.

Should the allegations be initially or eventually be justified, the Trust Protector needs documentation, and before taking any action should have researched the causes.

Before termination, mail a certified letter to the errant Trustee advising him or her of complaints. Enough time to respond is part of any formal termination effort. At this point, though, an errant Trustee unusually resigns before further action is required.

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<sup>73</sup> Appendix A. Sample Format 4

<sup>74</sup> Appendix A. Sample Format 3

### **Replacement and Training**

As the Trust matures, the intricate details become great. Bringing in a new Protector requires him or her to learn the Trust's procedures and its history. The easiest way to do this is to have the Trust Protector read the Minutes of previous meetings, and attend the next Board of Trustees Meeting.

### **Removal of a Protector**

The Grantor can always remove the Protector. After the Grantor passes, though, one solution is to require agreement of two-thirds of the Beneficiaries to replace him or her for cause. That is, this cannot be just a whim.

Circumstances set in the Trust Indenture allow replacing a Protector by the Board of Trustees after the Grantor has passed. This can be on the death or resignation of the Protector, or the Protector's failing health under conditions set in the Trust Indenture. For example, if the Board of Trustees requests statements from two medical doctors about the Protector's health and he or she fails to do so, then the Board of Trustees can replace the Protector.

### **Replacement of Trustees**

The Protector has the authority to replace the Trustees if they have quit, or suddenly died. As explained in the Trust Indenture, this authority applies only if both Trustees are absent. If one Trustee remains, he or she can always hire another Trustee.

### **Court-Appointed Trustees**

The Protector's main purpose is to avoid court intervention. Authority given to the Protector requires him or her to act. If the Protector does nothing, then the Trust comes under the jurisdiction of a court as the cash flow stops for failure of Trustee signatures. Imagine what happens if a Trust with a \$20,000.00 a month cash flow is unable to pay bills and send out distribution checks!

### **Separate Agreement**

Although the authority for the Protector to act is in the Trust Indenture, the Trust Indenture is a private document. Create a separate Agreement to show to others for both the Grantor and Protector to sign.<sup>75</sup> When dealing with financial institutions, they only

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Appendix A, Sample Format 3

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need to know what the Protector can do about removing a Trustee. A concise one-page summary is enough.

Organizations contributing to this section have learned the Protector role is integral to the smooth functioning of the Trust. A statement about the Protector's having the authority to terminate a Trustee is simple, yet the complexity includes several steps and formal notice. The legal departments of financial institutions need solid evidence presented to them. The one-page statement outlines the Protector's authorities. The financial institution may need specific types of assurances before responding.

### **Information Resource**

The Internet has several articles about Trust Protectors should you want to research this subject further.

## Chapter 12: Screwball Trusts

**W**hen it comes to Trusts, lack of education can be heartbreaking. Although this chapter focuses on the misuse of the Common-Law Trust, Statutory Trusts can be equally faulty.

You might ask yourself if these people who lost to the IRS were guilty of fraud, or guilty of not knowing enough about Trust structuring to know how to handle accounting. Being ill advised is obvious, but not investigating further and reading court cases is their responsibility. The “scam” Trust promoter is often ignorant of his or her own errors.

Mixed up with Trusts are the controversies about taxing. Some believe Trusts hold a key to avoid the IRS. Knowledge and skilled administration make a Trust successful. The cases presented here display the lack of correction information.

We summarize five cases, leaving the more legally inclined to get all the details from the sites given. One of these reports reveals a clever scheme, and others are simply sad. They show a tangled understanding of Trusts. This results in an improper application of basic Trust principles.

Before we delve into the details of scam Trusts, the IRS provides a fair description of a misused Common-Law Trust. The Grantor assigned earnings to the Trust. We discussed the issue of W-2 wages in Volume I, Chapter 8.

### **Revenue Ruling 75-257**

*“Family Estate” Trust: Grantor as owner. Lifetime services to the Trust are taxable. Grantor held 100% of the units of beneficial interest therein, with himself, his spouse, and a third-party as Trustee. Grantor is considered the owner of the Trust under Section 674, 676 and 677 of the code. The third-party Trustee, who has no Beneficial*



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*interest in the Family Estate, is not an adverse party. The Grantor's wife, as Trustee has no direct Beneficial interest in the Family Estate and therefore is also a nonadverse party. Wages assigned to the Trust for lifetime services were taxable.*<sup>76</sup>

This is a "Grantor Trust."<sup>77</sup> It is as though the Grantor kept all the assets in his own name. This is the basic format of a Living Trust.

### **The La Vern Schultz and Barbara Schultz Trust**<sup>78</sup>

A particular Trust company, claiming to create Constitutional Irrevocable Trusts, had its Trusts examined by the IRS. Several customers came under the audit microscope. In a preliminary letter, sent to the unhappy recipients, The IRS listed several recent court cases in which the hapless Trust Grantor paid back taxes because the Trust failed the Irrevocable Trust test. Oddly enough, court cases like this one allowed us to discover the proper structure for such Trusts.

Because the Trustee lacked power to control the wage earner's employment, and the nonadverse Trustee had unconstrained power over Trust assets, the Trust, sold to the Schultzes as an Irrevocable Trust, became judged a Grantor Revocable Trust. Thus, all taxes not paid before, now became due.

### **Personal Consumption**

The Schultz Trust took deductions for personal consumption, expenditures—food, clothing, travel, education and entertainment. Under the IRC, Trust expenses are only deductible if they are somehow inextricably linked to producing income. In other words, clothing is deductible if it is a needed uniform, education if it is about the Trust business.

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<sup>76</sup> Rev. Ruling 75-257, 1975-2 CB 251 – IRC Sec. 671 (§61, 672, 674, 676, 677, 1.61-2, 1.672(a)-1, 1.674(a)-1, 1.676(a)-1, 1.677(a)-1.)

<sup>77</sup> *Paxton v. Commissioner of Internal Revenue*, 9<sup>th</sup> Cir. 195, 520 F2d 923 (1975), certiorari denied 96 S.Ct. 459, 423 U.S. 1016

<sup>78</sup> *La Verne Schultz and Barbara Schultz, Petitioners v. Commissioner of Internal Revenue, Respondent*, U.S. Court of Appeals, Seventh Circuit, Nos. 81-2425, 81-2424, 81-2655, August 10, 1982.

So, what could the Trust Grantors have done to avoid this unfortunate circumstance, and where did these petitioners go off track? Does the IRS carefully explain what they should do? Obviously not; the IRS is in the business of collecting taxes, not educating people about tax avoidance.

First, the Constitutional Trust is no different, under the law, than any other Irrevocable Trust. A Trust is a Trust and must be managed as a Trust, not as a personal checking account. The courts are not interested in the Trust's classification. What matters is substance of transaction. If a person claims to have an Irrevocable Trust, then Trust must perform as one. The goods inside a Trust are separate from one's personal belongings, as the Trust assets are for the Beneficiaries.

If LaVerne and Barbara Schultz had taken a wage from the Trust, and put the money into personal checking accounts, the funds would then have been separate for their personal purchases.

### **No Beneficiary Distribution**

Another point the Commissioner makes about the Schultz Trust is there is no Beneficial distribution. Here is where most bogus Trusts fail. An Irrevocable Trust is an income producing business with profits distributed to the Beneficiaries.

If they used Trust funds for their children, all they needed to do was add them up at the end of the year and give a K-1 to their children. It is not likely much tax is due; just pay it.

Failure to do this means it is not a Trust. The Schultzes put their earnings through the Trust. The Trust did not produce its own cash flow under a Board of Trustees. For example, if the Trust was funded by exchanging assets or money, such as with a mutual fund, then the cash flow of the investments belonged to the Trust under the control of the Board of Trustees.

### **No Adverse Party**

The next point of failure was that both Mr. and Mrs. Schultz were not only the Trust Grantors, but also the Trustees, and there was no adverse party.

We defined substantial adverse interest and adverse party in Volume I, Chapter 13.

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### **The Sad Plight of The Holman Estate<sup>79</sup>**

During the mid 1970s Dr. Bruce Holman and his wife bought what they thought was a secure, Irrevocable Family Trust. Through later legal complications, they discovered it to be revocable, and liable for the income taxes they hoped to avoid. In examining this case, we find several common misconceptions and inaccurate arguments used by those who do not fully understand the use and purpose of an Irrevocable Trust.

#### **Adverse Party?**

The first complaint was that both Dr. and Mrs. Holman “exercised control over the Trust without the existence of an adverse party.” The Holmans also appointed Mrs. Holman's mother, Addie Duncan, as a third Trustee. Being blood related, she did not qualify as an adverse party.

#### **No Business Deduction Here**

The next issue, and probably the red flag that started the complications for the Holmans, is they took the cost of setting up their Trust as a business deduction. The cost of setting up a Trust is a personal expense and not a writeoff. The Trust, then, became subject to an audit, and taxes were due, which the Holmans paid.

#### **Control?**

Next, the Holmans sued to get a refund of paid taxes. They claimed their Family Trust was legitimate, and the IRS had no right to tax them. This, of course, was their next mistake. It brought their Trust under more severe scrutiny.

According to the Trust Indenture, the Trustee controlled Trust finances. This would have worked to their favor—had there been an adverse party. The Holmans were the Grantors and used the Trust for their own gain, having complete control over all the finances and assets. Because they became the Trustees, no Irrevocable Trust existed—exactly the same as in a Living Trust.

If, as demonstrated in Volume I with Mr. Betts, the Holmans had not used any of the Trust money for themselves, and only managed the funds for the Beneficiaries, they might have not lost their case.

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<sup>79</sup> *Holman v. U.S.* 53 AFTR 2d 84-862 (728 F.2d 462)

### The Kids As Beneficiaries?

The Holmans' named their children Beneficiaries. The parents, acting as Trustees, though, did not give them a K-1<sup>80</sup> distribution. There was no evidence—substance of transaction—this Trust was used for the children. The court ruled::

[the] plaintiff's attempt to create a Trust was merely an anticipatory assignment of income which would not shift the incidence of taxation from plaintiffs to the Trustee." Second, the district court relied on the "Grantor Trust" rules of 26 U.S.C. §§671-679 (1976)<sup>81</sup> to decide the Holmans were properly taxed on the income.

### And Then He Went to Jail . . .<sup>82</sup>

In 1986, Lonnie Schmidt sold a domestic Trust known as an Unincorporated Business Organization (UBO)<sup>83</sup> using an offshore entity as Beneficiary. Mr. Schmidt told people, although, there was a Trustee in the Marshall Islands, the individual buying the Trust had "total control." Mr. Schmidt's salespeople explained to the potential buyers, they "could pay whatever taxes they wanted to pay." The greatest error was the buyer named himself or herself the Trustee of his own UBO.

Further, Mr. Schmidt's sales representatives told potential clients that all earnings, including W-2 wages, could be transferred into the UBO.<sup>84</sup>

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<sup>80</sup> The same form is used for various other legal entities, e.g., to pass funds from an organization to a person, or from one organization to another.

<sup>81</sup> 26 U.S.C. §§ 671-679 states the Grantor is taxed based on his or her dominion and control over the Trustee, and whether or not there is an adverse party. In other words, if the Grantor does not control the Trustee, she or he is not taxed on the assets.

<sup>82</sup> *U.S. v. Schmidt*, 68 AFTR 2d 91-5005 (935 F.2d 1440).

<sup>83</sup> A type of Business Trust.

<sup>84</sup> W-2 wages cannot be given to the Trustee, because the wage earner, not the Trustee, has complete control over the cash flow. For a Trustee to be legitimate, the cash flow must go directly into the Trust without the Grantor or any exchanger's participation.

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### The No-Name, Offshore Beneficiary Account

Schmidt advised the clients to name First Surety Bank, an offshore entity in the Marshall Islands, as the Beneficiary, since it was not subject to U.S. tax jurisdiction. The bank refused inquiries from the IRS.<sup>85</sup> Each investor or Grantor, now a Trustee, signed a signature card for a numbered account at First Surety Bank. Every distribution from the Trust went to the bank to become available for the owner-Trustee to withdraw, thus traveling a full circle with no true Beneficiaries involved. The Trustee used the funds for his or her own purposes. This closed-loop pattern was proof positive the Trust existed to evade taxes.

The scheme came to the attention of authorities when some owner-Trustees filed 1040s at the end of the year. They claimed refunds. Worse, they also filled out federal fiduciary returns listing income which did not, in fact, belong to the UBOs *and* then claimed deductions to reduce drastically the taxes due.

Even when the prosecution laid these details on the table, Mr. Schmidt refused to quit. He moved to dismiss the indictment because it “was based on alleged tax law violations which were vague and highly debatable, and that, as a matter of law, the indictment was defective.”<sup>86</sup> His group moved to dismiss the indictment, asserting that prosecutorial misconduct during the grand jury review deprived them of their constitutional right to due process. Both motions were denied.

Mr. Schmidt was convicted for “conspiracy to defraud U.S. (Title 18), willful failure to file, and aiding preparation of false returns, obtained as a result of promoting Trusts that were tax shams.”

Used to hide income and assets fraudulently, this UBO became a criminal case. If the government had wished only to discover the taxes due, it would have filed a civil allegation.

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<sup>85</sup> The IRS can obtain any tax information from any country by extortion and bribery, so do not believe anyone who tells you that your records are safe anywhere. Recently, the IRS signed agreements with most of the offshore havens.

<sup>86</sup> Mr. Schmidt forgot the simple fact that the taxing agencies had more authority and power than he did, and that “he who owns the gold, owns the country.”

The judge pointed out that, for more than 50 years, courts held that when placing assets in a Trust, either the Grantor must give up total dominion and control or pay the tax on the income.

This case serves as a dramatic reminder that you are liable for taxes only on what you own, and that, to dispose of legal challenges, you **must** surrender assets to a genuine Board of Trustees.

### **Exclusive Rights of Lifetime Services**

There was a time when “Exclusive right of lifetime services” was part of some Common-Law Trust Indentures. This means any money earned by the Trust Grantor belongs to the Trust. Therefore, people assigned earnings to the Trust.

The tax court disagreed. It has said in many court cases the one who earns the money is the one who pays the taxes. What often happens in bogus Trust schemes is the person who sells the Trust advises those who put the funds into the Trust to avert taxes by depositing personal money into the Trust checking account.

### **Having Control**

If funds come into the Trust from Trust earnings, such as joint ventures, partnership, stock portfolios and rental income, there is no doubt the funds belong to the Trust and not the Grantor. If the Grantor deposits funds into the Trust, then he or she controls them. It is the same as giving money to children. The parents control the money, not the children. Mr. Schmidt put his W-2 wages into the Trust. He remained in control, as at any time, he could decide not to put his W-2 wages into the Trust. As shown in Volume I, Chapter 8, this does not work.

### **Income Producing Source**

In most states a business can be put into a Trust. In those states, though, it is important other income supplement the business venture so the business is not the only cash flow source. This prevents the person running the business from controlling the Trustees.

As mentioned in Volume I, Chapter 17, it is better to make the sole proprietorship a partner with the Trust.

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### **Joy Foundation and Jack Malone**

Jack Malone was the founder of the Joy Foundation and sold Trusts. He lost his battle with the IRS. A judgment was posted on his web site as punishment for his misdeeds. The Joy Foundation client lists were confiscated. This announcement seems harsh, but there is more to this story than appears.

### **Federal Serfs**

There is a difference between those who sell Trusts and go to jail for tax evasion, and those Trust companies teaching proper Trust structuring and administration. The Beneficiaries pay the tax, and the main focus of the Trust is for the Beneficiaries. Unfortunately, in the eyes of the IRS, Trusts are all about the taxes.

### **Legality of the IRS?**

Where many constitutionally oriented Trust companies go awry is failing to understand that even though the IRS may not be “legally” established, it is bigger than them. It has an unlimited cache of Federal Reserve Notes to chase those who try to divert its power. When a Trust company tells people they do not need to pay taxes, then the IRS—the police for the Federal Reserve—gets irritated. That Trust company becomes a target: the IRS brings it down with all its clients, as seen in the referenced web site.

### **Who Has the Power?**

Jack also told people the federal income tax is unconstitutional as a direct tax not apportioned among the states. Jack is right, but who has enough power, and especially money, to go up against the IRS? If big bad brother doesn't like what you say . . .

Further, Jack said the Internal Revenue Service is not legally sanctioned to collect taxes—but he forgot, the judge pays income taxes. If that judge rules against the IRS, unpleasant complications in his or her life may follow. Your life is not worth the sacrifice. Simply put together a Trust for the Beneficiaries and conduct your life accordingly. Do not mix the politics of taxation with Trust funds.

### **The Difference: Personal and Trust Taxes**

Jack was found guilty of advising people not to file their tax returns, giving false information and interfering with the administration and enforcement of internal revenue laws. No where in the published Default Judgment is any statement about whether the

Trust filed or did not file or pay or did not pay its taxes. So, what was Jack telling people about how to manage their Trusts? Maybe, nothing.

Trust accounting, by the way, is atypical when compared with other types of accounting. The Trust taxes are reported to the IRS on a Form 1041, which is different from a personal 1040. In fact, we have discovered that it takes substantial education, learned through initiation into the Trust world, just to handle the accounting and the reporting.

### **How Should It Have Been?**

As usual, the judgment does not say anything about what Jack should have done. First, the taxes filed by the Grantor are separate from the taxes filed by the Trust. So, if Jack sells Trusts, why did he advise clients about personal taxes? That is like selling apples and telling people to eat oranges; one has nothing to do with the other. In fact, if you want your Trust to be safe, you need to pay personal taxes! What better insurance the Trust is set up correctly?

Irrevocable Trusts support society through helping the family. Both the courts and the IRS discourage the selfish use of an Irrevocable Trust.



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## Chapter 13: Oops! They Got Ya!

**W**e feel there has been enough information given in Volume I to understand court cases and these Revenue Rulings. Before we get into the Revenue Rulings, we share with you this recent appeal.

While the Revenue Rulings apply to simple Trusts with one Beneficiary, this offshore court case demonstrates using several Trusts, inappropriately, to hide money.

### **Where is the Beneficiary?**

Because we emphasized so much in Volume I the importance of a legitimate Beneficiary, we share with you this short summary of a tax evasion case using Offshore Trusts. We feel this overview is sufficient so you can know what not to do.

Before *EASTERBROOK*, *Chief Judge*, and *WOOD* and *EVANS*, Circuit Judges.

*EASTERBROOK*, *Chief Judge*. Denny Patridge, who owned an insurance agency, decided to make life hard for the revenueurs by transferring his income to an off-shore trust and then pretending that he had no income. The first trust in line, located in Antigua, transferred everything to a second trust, in Belize. The second trust transferred the money to a third trust (also in Belize), which loaned it back to Patridge, who conveniently never paid interest or repaid any of the debt. When applying for credit, Patridge treated the proceeds from Trust #3 as income and claimed to have no debts. Trust #1 and Trust #2 filed tax returns, each claiming to have expenses exactly equal to its income. Trust #3 never filed a tax return. Patridge himself filed returns in some years, though not in others, and claimed to have negligible income. After an audit, the IRS concluded that Patridge's income was significant and that he owed \$74,279 in taxes for 1996

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and \$49,836 for 1997. Penalties took the total to \$130,736 (plus interest) for 1996 and \$88,675 (plus interest) for 1997.<sup>87</sup>

Mr. Patridge lost. The judges declared his argument frivolous. Using ten pages to express their total disapproval of methods and procedures, they discuss tax law in brief. This situation was so outrageous, the judges considered sanctions.

### When is a Grantor Taxable?

IRS personnel decide when an Irrevocable Trust is used as a Grantor Trust by how external documents are filed. For example, under whose name is the property recorded at the County Recorder's Office? Does the Grantor have enough cash flow to pay the mortgage? In a scam Trust, the Grantor often shows no income, yet pays the mortgage. Once there is a suspicion of misuse, the IRS launches an investigation.

By sending out a letter of inquiry, the IRS tests to see if there is an Adverse Trustee. The response to the letter alerts the IRS about the knowledge of the Trustee. If answered by the Grantor, this begins an inquiry. If the Trustee gives too much information, showing a sign of ignorance or weakness, then there will be follow up. There can be follow up anyway, just because the agent is misinformed concerning privacy and Trust structuring. Often, there is little to no training of IRS agents. They harass due to their own ignorance of, not only the Internal Revenue Code, but the Bill of Rights.

It is essential that a real Board of Trustees functions. In one of the cases below, the Grantor became the Trustee. Documents proved that he did not manage the estate for his own gain. We feel that when the Grantor becomes the Trustee, a red flag goes up, and the Grantor is then subject to inquiry. After the Trust has performed independently for at least three years, preferably five years, and the Grantor has enough training to handle the IRS, then the Grantor could become a Trustee.

Reformatted from the original IRS text downloaded from the Internet, the wording of the following three case studies has not changed.

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<sup>87</sup> *United States of America v. Denny R. Patridge*, No. 06-3635 Appeal from the United States District Court for the Central District of Illinois. No. 04-20031-001—Michael P. McCuskey, Chief Judge. Argued September 5, 2007—Decided November 14, 2007.

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**Revenue Ruling 75-257****1975-2 C.B. 251 Section 61 --**

Gross Income Defined Sec. 671, Sec. 672, Sec. 674, Sec. 676 Sec. 677

*"Family Estate" Trust; grantor as owner. An individual grantor, who transferred his personal residence, rental property, and income producing securities to a so-called "Family Estate" Trust in exchange for all the "units of Beneficial interest" therein, with himself, his spouse, and a third party as trustees, is considered the owner of the trust under either section 674, 676, or 677 of the Code. Assignment of his "lifetime services" to the trust, which included all remuneration earned by him regardless of its source, is ineffective to shift his tax burden to the trust.*

Full Text: Revenue Ruling 75-257 /1/

Advice has been requested concerning the Federal income tax treatment with respect to the transfer of an individual's property and "lifetime services" to the trust arrangement described below.

In 1974, C, as Grantor, created a trust that he named "The C Family Estate (A trust)" and referred to as a "pure trust," and "equity trust," or "constitutional trust" (hereinafter referred to as the Family Estate). C transferred to the trust certain property consisting of his personal residence, an apartment building, and income-producing securities. In addition, by affidavit, C assigned to the Family Estate the exclusive use of his "lifetime services" including all remuneration earned by him regardless of its source. In exchange, C received certificates representing all the "units of beneficial interest" in the Family Estate under the terms of the governing instrument.

At the time of the assignment of his "lifetime services" to the Family Estate, C was employed by the X corporation. C notified the corporation of the assignment of his services to the Family Estate and re-

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requested that such sums of money and any other forms of remuneration that would, but for the assignment, be due and payable to him be made payable to the Family Estate. However, X corporation refused to comply with C's request and continued to remit to C, in his own name, C's weekly salary check. C, in turn, endorsed the check and deposited it in the Family Estate's bank account.

C, his wife, and a third party are the designated trustees of the Family Estate. The trust instrument provides that a majority vote is necessary for any action to be taken by the Family Estate. As trustees they are given a broad grant of powers. They may do anything that any individual may legally do in any state or country, and they may deal with the trust assets and conduct any business as they see fit. They also have the powers to fix and pay compensation of all officers, employees, or agents in their discretion and to pay themselves such compensation for their services as may be determined by a majority of the Board of Trustees. The trust instrument further provides that a "Minute of Resolutions" of the trustees authorizing what they determine to do or have done shall be evidence that such an act is within their power. It also provides that the trustees' authority is similar to that of the executor of an estate wherein the testator directs that the executor is to handle the estate in the manner he thinks best, limited by the terms of the instrument and without the necessity to resort to the court for permission or approval of any transaction.

The Grantor is designated as the executive manager of the Family Estate and his spouse as the secretary. As such, they are entitled to receive consultant fees from the Family Estate for services performed for the Family Estate. The trust instrument provides that C and his family may continue to live in the personal residence that C transferred to the Family Estate, purportedly because it is for the convenience of the Family Estate in its capacity as C's "employer." In addition, the Family Estate will supply the living costs and provide health care for the Grantor and his family. The trust instrument further provides that the Family Estate shall continue for twenty years unless the trustees, by unanimous vote, agree to terminate the Family Estate on an earlier date.

Section 61(a) of the Internal Revenue Code of 1954 provides, in part, that gross income means all income from whatever source derived, unless excluded by law. Gross income includes income realized in any form, whether in money, property, or services. It is the first principle of income taxation that income must be taxed to him who earns it. *Commissioner v. Culbertson*, 337 U.S. 733, 739-740 (1949), 1949-2 C.B. 5. Further, one who earns income cannot avoid taxation by diverting it to another entity, since anticipatory assignment of income is ineffective as a means of avoiding tax liability. *United States v. Basye*, 410 U.S. 441, 449-450 (1973), 1973-1 C.B. 325. In the case of *Lucas v. Earl*, 281 U.S. 111 (1930), the taxpayer entered into a contract with his wife under which all property (including salaries, fees, etc.) thereafter acquired by either was to be received and owned by both parties as joint tenants. In holding that all of the taxpayer's salary and fees were attributable to him for tax purposes, the Court stated at 114-115: "There is no doubt that the statute could tax salaries to those who earned them and provide that the tax could not be escaped by anticipatory arrangements and contracts however skillfully devised to prevent the salary when paid from vesting even for a second in the man who earned it. That seems to us the import of the statute before us and we think that no distinction can be taken according to the motives leading to the arrangement by which the fruits are attributed to a different tree from that on which they grew."

Regardless of whether an assignment of income is an irrevocable assignment, and regardless of whether the income is assigned for a substantial period of time, the true earner of the income realizes economic gain from the disposition of such income and is taxable on it. *Galt v. Commissioner*, 216 F. 2d 41 (7th Cir. 1954). In resolving the question of who earns the income, the court will look to who has actual control over the earning of the income rather than who has apparent control over the income. *American Savings Bank*, 56 T.C. 828 (1971).

Similarly, in Revenue Ruling 55-2, 1955-1, C.B. 211, the Internal Revenue Service held that unpaid accounts receivable, which represent compensation for personal services and which were transferred by a

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taxpayer to an irrevocable trust for the benefit of his minor child were, upon collection, taxable to the taxpayer-Grantor and not to the trust.

It is evident from the foregoing that one who transfers his future earned income by an anticipatory assignment realizes income quite as much as if he had collected the income and paid it over to the object of his bounty. It is of no consequence that such income has been assigned to a trust. See *Comer v. Davis*, 107 F. 2d 355 (5th Cir. 1939); *Est. of Sidney S. Gorham*, 38 B.T.A. 1450 (1938); *Edward J. Luce*, 18 B.T.A. 923 (1930), *aff'd.*, 55 F. 2d 751 (D.C. Cir. 1932).

With respect to the services performed for X corporation, the legal relationship of employer and employee continues to exist between X corporation and C. It is C, not the trust, who earns the income as an employee of X corporation. The Family Estate merely has the right to receive C's earnings, reduced by amounts withheld by X corporation. Accordingly, any income from services performed by C for the X corporation will be income to C and not income to the Family Estate.

The question of who is taxable on the income from the securities and rental property conveyed to the Family Estate is decided under subpart E of the Code (sections 671-678). These sections of the Code provide generally that the Grantor is taxable on the income of a trust over which he has retained certain powers or rights that give him substantial dominion and control over the trust.

Section 671 of the Code provides, in part, that where it is specified in subpart E that the Grantor or another person shall be treated as the owner of any portion of a trust, there shall then be included in computing the taxable income and credits of the grantor or the other person those items of income, deductions, and credits against tax of the trust which are attributable to that portion of the trust to the extent that such items would be taken into account under chapter 1 in computing taxable income or credits against the tax of an individual.

Section 674(a) of the Code provides that the grantor shall be treated as the owner of any portion of a trust in respect of which the Beneficial enjoyment of the corpus or the income therefrom is subject to a power

of disposition, exercisable by the grantor or a nonadverse party, or both, without the approval or consent of any adverse party.

Section 672(a) of the Code provides, in part, that for purposes of subpart E, the term "adverse party" means any person having a substantial Beneficial interest in the trust which would be adversely affected by the exercise or nonexercise of the power which he possesses respecting the trust. Section 672(b) provides that, for purposes of subpart E, the term "nonadverse party" means any person who is not an adverse party. Pursuant to section 1.672(a)-1(a) of the Income Tax Regulations, a trustee is not an adverse party merely because of his interest as trustee.

The question of whether a particular interest is adverse or nonadverse is essentially one of fact which must be determined by considering in each case the particular interest created by the governing instrument. *Floyd G. Paxton*, 57 T.C. 627, 631 (1972). In the instant situation, the third-party trustee, who has no Beneficial interest in the Family Estate, is not an adverse party. The grantor's wife, as trustee, has no direct Beneficial interest in the Family Estate and therefore is also a nonadverse party. The trust instrument specifies that affirmative action, except for early termination of the trust, may only be had upon a majority vote of the trustees. Thus, C, as grantor, could receive Beneficial enjoyment from the Family Estate by the action of himself and either of the other trustees. Therefore, C is considered to be the owner of the trust under section 674 of the Code.

Section 676(a) of the Code provides, in part, that the grantor shall be treated as the owner of any portion of a trust, where at any time the power to revest in the grantor title to such portion is exercisable by the grantor or a nonadverse party, or both.

Pursuant to section 1.676(a)-1 of the regulations, if the title to a portion of the trust will revest in the grantor upon the exercise of a power by the grantor or a nonadverse party, or both, the grantor is treated as the owner of that portion regardless of whether the power is a power to revoke, to terminate, to alter or amend, or to appoint.



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The trust instrument provides that the Family Estate will continue for a period of twenty years; however, the trustees can, by unanimous vote, terminate the Family Estate at an earlier date. If and when this occurs, the corpus and income of the Family Estate is to be distributed to the holders of units of Beneficial interest. Since the other two trustees are nonadverse parties, the grantor could vote with either or both of them to vest title in himself.

Therefore, since the grantor is the only holder of units of Beneficial interest in the Family Estate, he may be treated as the owner of the entire trust under section 676 of the Code.

Section 677(a) of the Code provides, in part, that the grantor shall be treated as the owner of any portion of a trust whose income without the approval or consent of any adverse party is, or, in the discretion of the grantor or a nonadverse party, or both, may be distributed to, or accumulated for future distribution to, the grantor or the grantor's spouse. Section 1.677(a)-1(d) of the regulations provides, in part, that under section 677 a grantor is, in general, treated as the owner of a portion of a trust whose income is, or in the discretion of the grantor or a nonadverse party, or both, may be applied in discharge of a legal obligation of the grantor (or his spouse in the case of property transferred in trust by the grantor after October 9, 1969).

Section 677(b) of the Code provides, in part, that the income of a trust shall not be considered taxable to the grantor under section 677(a) or any other provision of chapter 1 merely because such income, in the discretion of another person, the trustee, or the grantor acting as trustee or cotrustee, may be applied or distributed for the support and maintenance of a Beneficiary (other than the grantor's spouse) whom the grantor is legally obligated to support or maintain except to the extent such income is so applied or distributed.

Section 1.677(b)-1(d) provides, in part, that the exception provided in section 677(b) relates solely to the satisfaction of the grantor's legal obligation to support or maintain a Beneficiary. Consequently, the general rule of section 677(a) is applicable when in the discretion of the grantor or nonadverse parties income of a trust is or may be applied in discharge of a grantor's obligations other than his obligation

of support or maintenance falling within section 677(b). Thus, if the grantor creates a trust the income of which may in the discretion of a nonadverse party be applied to the payment of the grantor's debts, such as the payment of his rent or other household expenses, he is treated as the owner of the trust regardless of whether the income is actually so applied.

In the case of *Louis W. Hill*, 33 BTA 891 (1936), *aff'd.*, 88 F. 2d 941 (8th Cir. 1937), the court held that the grantor was taxable on income used to support his wife and maintain the home in which the grantor and his wife resided. Further, it has also been held that the grantor is the owner of a trust where the income, on authority of a nonadverse trustee, can be applied to satisfy the grantor's debts. See *Herbert A. Loeb*, 5 T.C. 1072 (1945), *aff'd.*, 159 F. 2d 549 (7th Cir. 1946); *Clifton B. Russell*, 5 T.C. 974 (1945); and *James L. Knight*, 39 B.T.A. 436 (1939). Similarly, the Service has held that a taxpayer who has conveyed mortgaged property in trust and has a personal liability on the mortgage, which continues after the conveyance in trust, is taxable under a predecessor of section 677 of the Code on the use of the trust income in discharge of the interest or principal on the mortgage. Revenue Ruling 54-516, 1954-2 C.B. 54.

Although the trust instrument of the Family Estate does not specifically provide that the trustees have the power to distribute income to the holder of the Beneficial interest (the grantor), under the authority inherent in the instrument, the trustees have exercised the power to distribute income to the grantor by discharging certain of his obligations for housing and health care.

Therefore, since the income of the trust has been and may be distributed to the grantor or his spouse either without the approval or consent of any adverse party, or in the discretion of the grantor and a trustee who is a nonadverse party, C is treated as the owner of the trust under section 677 of the Code.

Accordingly, because of his dominion and control over the Family Estate Trust, for Federal income tax purposes, C will be considered the owner of the trust under either section 674, 676, or 677 of the Code, or a combination of these, as the case may be. Therefore, as provided

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by section 671, in computing his taxable income and credits he must include those items of income, deductions, and credits to the extent such items would be taken into account in computing taxable income or credits against the tax on an individual. See also Floyd G. Paxton, 57 T.C. 627 (1972), in which the grantor of a trust similar to the Family Estate was considered to be an owner of the trust.

/1/ Also released as TIR-1383, dated June 9, 1975.

### Revenue Ruling 54-516

#### 1954-2 C.B. 54, Sec. 61

*A transferred certain real estate to a trust, naming himself as trustee and his children as Beneficiaries. Under the terms of the trust instrument, the trust is to continue until the youngest of the children, or the survivor of them, becomes 21 years of age. The income of the trust, with certain exceptions, is to be accumulated in the trust during the term of its existence. The grantor has not retained a reversionary interest in the trust corpus or income therefrom nor a power to control the Beneficial enjoyment of such corpus or income. Upon termination of the trust, the corpus and accumulated income thereon will be distributed to the Beneficiaries in equal shares. Held , the income of the trust is taxable to the trust and not the grantor-trustee. However, any income of the trust distributed and applied for the support or maintenance of a Beneficiary whom the grantor is legally obligated to support or maintain will be taxable to him.*

#### Full Text: Revenue Ruling 54-516

Advice is requested whether the income of a trust is taxable to the grantor under the following circumstances.

A transferred to a trust for the benefit of B and C, his children, certain real estate against which there is a mortgage. The trust instrument names A as donor and trustee, and states that the trust shall be deemed a gift in equal shares to B and C. The instrument provides that the trustee shall receive and add to the corpus of the trust, any property which at any time may be transferred, assigned, delivered, bequeathed or devised to the trustee for the trust by the donor or by any other

person, or which may otherwise be acquired by him, or which he may receive under any insurance policies made payable to him by the donor or any other person.

The trust instrument provides further that the income from the real estate shall be used first to pay the necessary expenses of the trustee in the administration of the trust, taxes on the real estate, interest and principal on the mortgage, and expenses of maintaining the property. The balance of the income from all trust properties shall be accumulated and added to the principal of the trust.

Notwithstanding the provisions directing the accumulation of income in the trust, the trustee has the power, when he deems that the income from the trust is sufficient to effectuate the purpose of the trust and to meet its current obligations, to pay any or all of the income of the trust (whether accumulated from prior years or received during the current year) to a duly appointed guardian for either or both of the Beneficiaries of the trust. Should the trustee make such a distribution of income, such distributed income shall be the property of the Beneficiary outright, under the control of his guardian.

The trust will continue until C, the youngest of the children, becomes 21 years of age. Should either Beneficiary die before C becomes 21 years of age, the trust will, nevertheless, continue until the survivor of the Beneficiaries becomes 21 years of age, and in such event the surviving Beneficiary upon reaching the age of 21 years shall receive the entire corpus and accumulated income of the trust. Should both Beneficiaries die before the trust is terminated, the trustee shall convey the entire trust estate to the lawful heirs of the Beneficiary who dies last. Broad powers of management are granted to the trustee. However, the trustee may not make loans of trust money to himself nor convey trust assets to himself. In no event shall any of the trust income ever be used to pay the legal obligations of the donor-trustee. The donor has no right or power to revoke the trust, and he may amend the trust instrument only for the purpose of granting additional powers to the trustee. Such additional powers, however, may not extend to include the power to grant any right or benefit to the donor.

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Section 39.22(a)-21 of Regulations 118 provides that income of a trust is taxable to the grantor under section 22(a) of the Internal Revenue Code of 1939 where (1) the grantor has a reversionary interest in the corpus or the income therefrom which will or may reasonably be expected to take effect in possession or enjoyment within a relatively short term of years (see section 39.22(a)-21© of Regulations 118), or (2) the Beneficial enjoyment of the corpus or the income therefrom is subject to a power of disposition (other than certain excepted powers) exercisable by the grantor or another person lacking a substantial adverse interest in such disposition, or both, or (3) the corpus or the income therefrom is subject to administrative control, exercisable primarily for the benefit of the grantor. Where any one or more of the above conditions is present the income of such trust is taxable to the grantor.

Under the trust agreement, the grantor has not retained a reversionary interest in the trust corpus or income within the meaning of section 39.22(a)-21 of Regulations 118. The Beneficial enjoyment of the trust corpus or income is not subject to a power of disposition by the grantor or other person. Although broad powers of administration are granted to the grantor-trustee, the trust instrument specifically provides that neither the corpus nor the income of the trust is subject to administrative control exercisable primarily for the benefit of the grantor.

Accordingly, it is held that the income of the trust is taxable to the trust and not to the grantor. However, if any of the income of the trust is used for the support of either of the Beneficiaries during the period that the grantor is legally obligated to support such Beneficiaries, the income so used will be taxable to the grantor under section 167 of the Code. Furthermore, if the grantor remains liable in any capacity, other than as trustee, for the mortgage on the real estate transferred to the trust, any income of the trust which is used to pay principal or interest on such mortgage will be taxable to him. See section 39.167-2 of Regulations 118.

**Revenue Ruling 55-2****1955-1 C.B. 211, Sec. 61**

*Unpaid accounts receivable which represent compensation for personal services transferred by a taxpayer to an irrevocable trust for the benefit of his minor child are upon collection taxable to the taxpayer-grantor and not to the trust.*

**Full Text, Revenue Ruling 55-2**

Advice has been requested whether accounts receivable transferred to an irrevocable trust created for the benefit of a taxpayer's minor child are upon collection taxable to the grantor or to the trust.

A taxpayer whose principal source of income arises from his professional practice as a surgeon created an irrevocable trust for a minor child to insure to him adequate educational and other opportunities and transferred to the trust annual gifts of selected accounts receivable. The trust agreement provides that the funds received upon collection of the accounts receivable and the income therefrom shall be accumulated until the Beneficiary reaches the age of 21 years or enters college, whichever may occur first, whereupon the principal and income are to be paid in regular installments. A bank is designated to act as trustee and the taxpayer retains none of the rights of administration or control.

Section 39.22(a)-1 of Regulations 118 provides that gross income includes in general compensation for personal and professional services, business income, profits from sales of and dealings in property, interest, rent, dividends, and gains, profits, and income derived from any source whatever unless exempt from tax by law.

Payments for personal services are always due primarily to the person rendering the services. He remains 'the owner of the right or title from which the income springs.' See *A. D. Saenger et al. v. Commissioner*, 69 Fed.(2d) 631; *Edward J. Luce et al. v. Burnet*, 55 Fed.(2d) 751. When such earnings are assigned the assignee takes as representative of the assignor and the earnings continue to be taxable to him. In *Helvering v. Paul R. G. Horst*, 311 U.S. 112, Ct. D. 1472, C.B. 1940-2, 206, the Supreme Court said: 'The power to dispose of

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income is the equivalent of ownership of it. The exercise of that power to procure the payment of income to another is the enjoyment and hence the realization of the income by him.' See also *Lucas v. Guy C. Earl* , 281 U.S. 111 and *Helvering v. Gerald A. Eubank* , 311 U.S. 122, Ct. D. 1473, C.B. 1940-2, 209.

Accordingly, it is held that unpaid accounts receivable which represent compensation for personal services transferred by a taxpayer to an irrevocable trust for the benefit of his minor child are upon collection taxable to the taxpayer-grantor and not to the trust.

Whatever may not be clear after reading this, is likely to become more obvious as you would through the various explanations and look through the Sample Formats.

## Chapter 14: And Then We Got Them!

**T**he IRS does not win all the time, as we saw with Mr. Betts in Volume I. Here are some other stories to ponder, along with a partial list of Trust cases for those who want to delve into the details.

### Creditors Failed

Mr. Jack E. Cissner set up a Trust for his children, and as time passed the I.R.S. asserted he owed [back] taxes.<sup>88</sup> There was no proof, as he set up his Trust more than eighteen months before his creditor problems began.

The courts ruled that a Trust settled in good faith by the Grantor for the benefit of his children cannot be penetrated and assets seized to pay the alleged tax debts of the Grantor on the ground the Trust was established to defraud the Grantor's creditors where the conveyance of the assets of the Grantor did not leave him insolvent, and where it was done prior to him having knowledge that at some future date he may allegedly owe taxes or other debts.

### Dust off the Past

Way back in 1940 the irrevocable tax laws were not so well-defined. In one of the older cases about Irrevocable Trusts, we find the Grantor is not taxable; a serious look at this court cases suggests that in today's legal setting, this Trust might have been broken.

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<sup>88</sup> *U.S.A. vs. Jack E. Cissner, et al.* Civil Court, Wash. Civ. No. C82-466T.



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Mr. Branch<sup>89</sup> created a Trust with securities held as collateral for a promissory note. He also became a Trustee, and appointed two more Trustees. He gave all the income to his wife.

The Internal Revenue Commissioner objected based on the fact the corpus reverted to Mr. Branch when Mrs. Branch passed away. The Commissioner also argued that Mr. Branch had the power to revoke the Trust. All he had to do was to default in paying his notes, and the bank would then foreclose on the securities, which made up the Trust estate, and apply the same to satisfy his private debt.

The Court of Appeals rejected the Commissioner's argument because if Mr. Branch did default on the notes, he was still obligated to pay back the Trust estate for any losses incurred. Further the Court stated that:

Because the Grantor's agreement to clear the Trust estate, the pledges would be obliged, on principles of marshaling, to resort first to the securities not included in the Trust estate. For aught that appears in the records, this recourse might itself be enough to satisfy the notes, without any harm of the Trust estate. If not, there is still the Grantor's personal debt to pay back the estate.

Because of today's standards for an Irrevocable Trust, there are several questionable points:

- Because of joint and community property rules, the wife receiving the income would be considered the same as both the husband and wife receiving the income. If Mr. and Mrs. Branch were in a community property state, she would need to surrender her rights to the property to become a Beneficiary.
- Mrs. Branch, as the Beneficiary, holds the power to revoke the Trust, as well as any part or parts of the Trust estate, which could make this a Revocable Trust
- Mr. Branch, as Grantor and Trustee, had sole investment powers without limits of normal investment procedures. In later cases, it has been determined that this unbridled discretion voids an Irrevocable Trust.

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*Commissioner of Internal Revenue vs. Branch*, 3592 United States Court of Appeals for the First Circuit. 114 F.2d 985, 40-2U.S.

● Mr. Branch, as Grantor, reserved the power to replace a Trustee, which although the Trust was not revocable, the Trustees could be fired by the Grantor or the Beneficiary. In today's legal climate, this could qualify the Trust as Revocable.

There are some other points about this Trust that make it most interesting. Although the amount of the corpus is not known, we do know the promissory note was for \$400,000. Therefore, we can assume that Mr. Branch was wealthy, as the Court expressed no concern that he could repay the Trust if he defaulted on the loan.

Further, Mr. Branch never took any of the money for himself.

There is always the possibility that Mr. Branch won his argument because of assets that he did control, and it just could be that a person with less influence would have lost the argument.

As mentioned in Volume I, the IRC contains information about Common-Law Trusts because they were used before the Federal Reserve created the taxation we now have. Some of these cases are old, some of them more current. When reading current court cases about Trusts and taxation, many of these cites are referenced.

### **Favorable Court Decisions**

Here is a list of Trust cases and related information favorable to Trusts. We share our excerpts from compiled collections:

1	(Head Note 5) Where husband created a Trust for benefit of wife and child, for the purpose of insuring that a considerable part of income should go to the wife, and the wife as well as husband was a Trustee, wife had a "substantial adverse interest" in disposition of corpus and income within Revenue Act of 1934 §166, paragraph 166, and hence husband was not taxable on Trust income paid to wife.	Phipps v. Commission of Internal Revenue, 1943, 137 F 2d 141 (2nd Cir. 1943)
2	(Head Note) Income from a long-term irrevocable Trust of which petitioner [Small] was Grantor and Trustee, and over which the Trustee had broad power of management, <i>held</i> , not taxable to petitioner.	Small v. C.I.R., 3 T.C. 1142 (1941)

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3	(Head Note 3) The income of a Trust was not taxable to Grantor under statute [Revenue Acts 1934, 1936, §166] governing taxation to Grantor of income from revocable Trusts merely because Grantor reserved the right to receive principal upon death of his wife if he should then be living, since while power to reconstitute or revoke may in economic fact be the equivalent of reversion, Congress confined the statute to Trusts where there was power to reconstitute, and did not extend it to Trusts which might revert to Grantor. 26 USCA 166	Suhr v. Commission of Internal Revenue, 126 F.2d 283 (1942)
4	A Trust is not dependent upon statutory law. A common law Trust is not subject to legislative control. The Trust relationship comes under the realm of equity, based upon the common law, and is not subject to legislative restrictions as are corporations and other organizations created by legislative authority.	Eliot v. Freeman, 220 U.S. 178 (1911)
5	[At 491:] Where the declaration gives the Trustees full control in the management of the business of the Trust, and the Trust Certificate Holders are not associated in carrying on the business and have no control over the Trustees, then there is no liability as partners.	Schumann-Heink v. Folsom 328 Ill 326, 159 N.E. 250, 58 A.L.R. 485, 491 (1927)
6	A Trust is not illegal if formed for the express purpose of avoiding taxation.	Weeks v. Sibley (D.C.) 269F, 155 (1920)
7	It is a familiar rule, that equity will not permit a Trust to lapse for lack of trustees. It is also a familiar rule, that a court of equity has power to remove Trustees upon a proper showing of fraud or unfitness on their part.	Burnett v. Smith, 240 S.W. 1007 (1922)
8	Even bad bargains in a genuine business transaction are held not to result in taxable gifts. Where value of stock was in excess of the consideration, the transfers were made in the ordinary course of business and are not subject to gift tax.	Attorney Leon Jaworski (later special prosecutor in Watergate) argued this case against the IRS -- Estate of Anderson v. Commissioner of Internal Revenue 8 T.C. 706 (1947)
9	The bank alleged that Kaminski owed them \$20,000. When Kaminski had no personal assets to seize after the bank obtained judgment, they tried to seize the assets of an Equity Pure Trust Mr. Kaminski had set up a few years before. The Bank's action failed as they were unable to penetrate the Trust.	United States National Bank of Omaha v. Andrew Kaminski. Civil action No. 77 cv. 1830, District Court of Jefferson County, Colorado, June 16, 1980

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10	Income was not taxable to donor where Trusts could not be revoked, altered or amended for his benefit without the consent of the primary Beneficiary or a person having a substantial interest in the disposition of the corpus or the income.	Bradly v. Commission of Internal Revenue, 1 T.C. 566 (1943)
11	(Head Note) A provision permitting the Grantor, as income Beneficiary, to call for corpus if needed to make the total distribution for any year \$10,000, [was] lost to that Beneficiary when he assigned all of his rights in the Trust income to his wife.	Huber v. Commission of Internal Revenue, 6 T.C. 219 (1949)
12	The common law Trust is not a corporation. The definition of corporation is "The right to be a corporation and to exercise corporate powers, is derived from the state. The power which creates has the power to destroy. The state has the right to limit the period of existence of its creature, the corporation; to provide conditions precedent or subsequent by laws preexisting at the time of its creation, or by laws subsequently passed to destroy its existence, for such reasons as may seem to the Legislature sufficient.	<u>City of New York v. Bryan</u> , 130 Appellate Division 658 (1909), 115 New York Supplement 551, as quoted in Sears, Trust Estates, page 5, paragraph 13.
13	The business Trust is not subject to the corporate tax on dividends.	Internal Revenue Code § 651 Deduction for Trusts Distributing Current Income Only.  §. 652 Inclusion of Amount in Gross Income of Beneficiaries of Trusts Distributing Current Income Only.  § 1491 Imposition of Tax
14	"...[T]he form of a contract is the considered and chosen method of expressing the substance of contractual agreements between parties and the dignity of contractual right cannot be judicially set aside simply because a tax benefit results either by design or accident."	Edwards v. Commissioner of Internal Revenue, 415 F. 2d 578, 582, 10 <sup>th</sup> Cir. (1969)
15	The Supreme Court has from earliest times recognized the Private Trust as a valid legal relation.	Reeves v. Powell, 267 SW 328 (1924)
16	Trust property cannot be held under attachment, nor sold upon execution, for the Trustee's personal debt.	Mayo v. Moritz, 24 N.E. 1083 (1890)

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17	Where taxpayer reserved no powers or rights either as Grantor or Trustee by which he could revert any of the principal or income of the Trust, the income thereof is not taxable to him.	Moore v. Commission of Internal Revenue, 3 T.C. 1205 (1944)
18	(Head Note 8) Where Trust established by Grantor for his children, in addition to granting extensive powers of control and management, authorized Grantor to make such changes as he saw fit in management of Trust estate for the best interests of children, but power to revoke or re-take any of the corpus or income was specifically denied to Grantor, and on termination of Trust both corpus and income were to be distributed to children named or their issue (offspring), Trust income was not taxable to Grantor under statute defining gross income or under statutes making income of a revocable Trust or income for Grantor's benefit taxable to Grantor.	§ 22, 167 (IRC 139) Jones v. Norris, 122 F. 2d 6 (10 <sup>th</sup> Cir. 1941)
19	Certificates (of a Trust) are personal property and convey no interest in the Trust's property.	Parker v. Mona-Marie Trust, 278 S.W. 321
20	(Head Note 11) Grantor could never obtain any of capital gains of Trust created for benefit of his wife and mother except upon happening of a remote, uncertain and improbable contingency, the capital gains of Trust were not taxable against Grantor.	Commission of Internal Revenue v. Betts, 123 F 2nd 534 (7 <sup>th</sup> Cir. 1941)
21	(Head Note 3) Where Grantor of Trust has stripped himself of all command over income for an indefinite period, and under terms of Trust instrument will probably never regain Beneficial ownership of the corpus, the Trust income should not be treated as Grantor's income under income tax statute merely because granter is Trustee with broad power of management.	Commission of Internal Revenue v. Branch, 114 F. 2 <sup>nd</sup> 985, (1 <sup>st</sup> Cir. 1940)

22	(Head Note 8) Where Trust established by Grantor for his children, in addition to granting extensive powers of control and management, authorized Grantor to make such changes as he saw fit in management of Trust estate for the best interests of children, but power to revoke or re-take any of the corpus or income was specifically denied to Grantor, and on termination of Trust both corpus and income were to be distributed to children named or their issue, the Trust income was not taxable to Grantor under statute defining gross income or under statutes making income of a revocable Trust or income for Grantor's benefit taxable to Grantor.	Jones v. Norris, 1941, 122 F. 2 <sup>nd</sup> 6 (10 <sup>th</sup> Cir. 1941)
23	Under Trusts created in Illinois for the benefit of Grantor's children, authorizing Grantor's wife and brother, who with the Grantor were Trustees, to change during Grantor's life the Trusts in any respect, the Grantor was taxable as direct Beneficiary of income, where under Illinois law it would be possible for Trustees to accumulate the income for or to distribute it to the Grantor directly. [Note: Grantor is taxed on income as Beneficiary.]	Helvering v. Stuart 63 S.Ct. 140, 317 U.S. 154 (7 <sup>th</sup> Cir. 1942), 87 L.Fd. 154
24	(Head Note) Where Trustees had primary responsibility to pay indebtedness incurred in purchase of Trust corpus and Settlor had only contingent liability to pay if Trustees should fail to do so, and indebtedness was incurred contemporaneously with establishment of Trusts and solely for accommodation of Trust and Settlor had no rights to Trust income, Trust income used to pay indebtedness was not used to pay personal indebtedness of Settlers and hence was not taxable to Settlers.	Edwards v. Greenwald, 217 F. 2 <sup>nd</sup> 632 (5 <sup>th</sup> Cir. 1954)
25	Now, because the courts have repeatedly ruled that Trusts are lawful, separate, profit making business organizations, any disallowance of the fiduciary fee paid to establish this Trust is in error. The fiduciary fee is a tax deductible business expense.	IRC Sec.. 212 (see R./N. Bagley, 8 T.C. 130, also Treasury Regulation No. 6161t-5.
26	Fair Market Value is determined by property received by taxpayer and not the F.M.V. of property transferred by taxpayer to the Trust.	Commissioner v. Marshman, C.A. 6 279 F 2nd 27 (1960)
27	Certificates in exchange are not taxable until a realized gain has occurred.	Burnett v. Logan, 283 U.S. 404 (1931)

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28	[5,6] Of course, a corporation may prefer its creditors except in a general deed of assignment, provided it acts in good faith and with no fraudulent intent . . . But a trustee who holds for their common benefit cannot discriminate between them.	Ashworth v. Hagan Estates, 181 S.E. 381 (1935)
29	The power to tax is subject to the 5th and 14th Amendments (due process) provisions. Congress can deprive no one of due process.	Beeland Wholesale Co. v. Kaufinan, 174 So. 516 (1937)
30	(Head Note 3 paraphrased) Community interest may be dissolved by either spouse by knowingly conveying interest to the other.	In re Baldwin's Estate, 71 P. 2 <sup>nd</sup> 791 (1937)
31	Certificates are not chattels, but are evidences of intangible rights.	Goodhue v. State S.T., Trust Co., 267 Mass 28.
32	(Head Note 3) Where taxpayer, as Beneficiary of Trust set up in divorce decree could exercise her own judgment as to amount of Trust income necessary for suitable support of the children, taxpayer had a substantial adverse interest to the husband as Grantor, and income from Trust was taxable to Beneficiary and not to Grantor.	Ketcham v. Commission of Internal Revenue, 142 F. 2 <sup>nd</sup> 996 (2 <sup>nd</sup> Cir. 1944)
33	Court cases about Trusts to be read by the inquiring attorney	Lafargue v. Commissioner, 689 F.2d 845, 846 (9 <sup>th</sup> Cir. 1982); Lazarus v. Commissioner, 513 F.2d 824 (9 <sup>th</sup> Cir. 1975); Bixby v. Commissioner, 58 T.C. 7575 (1972); Samuel v. Commissioner, 306 F.2d 682 (1 <sup>st</sup> Cir. 1962)
34	The IRS recognizes that there can be such a thing as a transaction where property changes hands without any taxable event. The term "Nonrecognition transaction" means any disposition of property in a transaction in which gain or loss is not recognized in whole or in part for purposes of subtitle A	IRC 7701 (1) (45) NONRECOGNITION TRANSACTION
35	A taxpayer "exchanges" stocks into a Trust, in exchange for a promise of future income, where the future income could not be accurately determined at the time of the exchange.	Stern v. Commission of Internal Revenue, 747 F.2d 555 (1984)

## Chapter 15: Head Scratchers

**W**hen properly analyzed, this advice from the IRS about Trusts, simply does not make any sense. Using terms inappropriate to the described events, and choosing Trusts incredibly off course gives even the most studious a headache. We feel Revenue Notice 97-24 offers a great opportunity to air out the “dirty laundry.”

Remember, the IRS is not interested helping lower your taxes. More than a few have heard this when calling IRS offices, “It is not our job to help you with your taxes,” or “It is not our job to help you reduce taxes. Please give me the form number.”

Let us see what creative gobbledegook has been produced here.

### **Omissions**

In Revenue Notice 97-24, April 21, 1997 the IRS gives five major examples of Trust arrangements to warn people away from getting a Trust. There have been several important facts left out of these descriptions. In this chapter and the following one, we take you sentence-by-sentence through its explanation to show you what has been omitted.

### **The Business Trust**

According to the IRS:

The Business Trust. The owner of a business transfers the business to a trust (sometimes described as an unincorporated business trust) in exchange for units or certificates of beneficial interest, sometimes described as units of beneficial interest or IBIs (trust units). The business trust makes payment to the trust unit holders or to other trusts



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created by the owner (characterized either as deductible business expenses or as deductible distributions) that purport to reduce the taxable income of the business trust to the point where little or not tax is due from the business trust. In addition, the owner claims the arrangement reduces or eliminates the owner's self-employment taxes on the theory that the owner is receiving reduced or no income from the operation of the business. In some cases, the trust units are supposed to be canceled at death, or "sold" at a nominal price to the owner's children, leading to the contention by promoters that there is not estate tax liability.

The following sentence is true:

The owner of a business transfers the business to a trust (sometimes described as an unincorporated business trust) in exchange for units or certificates of beneficial interest, sometimes described as units of beneficial interest or UBIs (trust Units).

The following sentence is misleading:

The business trust makes payments to the trust unit holders or to other trusts created by the owner (characterized either as deductible business expenses or as deductible distributions) that purport to reduce the taxable income for the business trust to the point where little or no tax is due from the business trust.

The correct way to word this is:

The business Trust disburses its profits to the Trust unit holders or to other Trusts created by the Grantor (not owner) which is a deductible distribution that can reduce the taxable income of the Business Trust to the point where little or no tax is due from the Business Trust.

The following sentence applies to a scam Trust:

In addition, the owner claims the arrangement reduces or eliminates the owner's self-employment taxes on the theory that the owner is receiving reduced or no income from the operation of the business.

The correct way to word this is:

The person who exchanged the business into the Trust is no longer the owner, and he or she received Trust Capital Units, thus giving control to the Board of Trustees. Should that person remain involved with the Trust, he or she would be a contractor or an employee of the Trust. If working as an independent contractor, he or she is responsible for the self-employment taxes and income taxes. If a person remains as an employee, then the Trust deducts the employment taxes from wages. Any Exchanger receiving a distribution is responsible to pay taxes thereon.

The last sentence applies to a scam Trust:

In some cases, the trust units are supposed to be canceled at death, or “sold” at a nominal price to the owner’s children, leading to the contention by promoters that there is no estate tax liability.

The correct way to word this is:

The Trust Capital Units received in exchange for the business cannot be transferred by the business owner, who is now an Exchanger. This Exchanger can request in writing the Units be transferred to the children or others at the time of his or her death (or at any time), but it is up to the Board of Trustees as Exchangers have no voting power, and are subject to the decisions of the Board of Trustees. The assets in the Trust are always owned by the Trust and not by the Exchangers or the Beneficiaries; therefore, the reissuing of the Trust Certificates is an internal process, and only leads to a K-1 distribution at the end of the year to the new Exchangers or Beneficiaries who are responsible to pay the taxes on funds received.

### **The Equipment or Service Trust**

The IRS describes abusive Trust arrangements as those being promoted with the promise of tax benefits with no meaningful change in the taxpayer’s control over or benefit from the taxpayer’s income or assets. The promised benefits may include the following:

Reduction or elimination of income subject to tax

- Deductions
  - Personal expenses paid by the Trust
  - Depreciation of an owner’s personal expenses paid by the Trust
  - Depreciation of an owner’s personal residence and furnishings

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- A stepped-up basis for property transferred to the Trust
- The reduction or elimination of self-employment taxes
- Reduction or elimination of estate or gift taxes

The list is impressive, and one would think that with this definition, even the time-honored Irrevocable Statutory Trust falls into the abusive Trust arrangement category.

There is a key phrase to note in Notice 97-24, “meaningful change.” This means ‘Did the Grantor actually surrender assets to a bonafide Irrevocable Trust Board of Trustees, or is he or she still in control of the assets?’ This particular notification blurs those lines, so those who read these warnings do not quite have a clear picture.

The determinant here is always—does the Trust have a fully functioning Board of Trustees or a real Trustee, separate from the Grantor? If yes, then a Trust exists, if not, then a scam Trust exists.

Before we apply our insight and interpretation to the example of an Equipment or Service Trust, we will address the issues listed above.

1. Reduction or Elimination of income subject to tax
  - a. If a person gives his stock portfolio to a Trust with a fully operating and conscious Board of Trustees, and the Grantor has surrendered control, then the Trust receives the funds and thus owes the tax. This, automatically reduces the Grantor’s income tax. We think this is obvious.
  - b. If all the funds that flowed to the Grantor, prior to the Trust, now flow to the fully functional Irrevocable Trust, and the Grantor has properly surrendered control of this cash flow, then the Grantor does not owe the tax, the Trust owes the tax. This is not only basic reasoning, it happens to be the tax law.
2. Deductions
  - a. Food and clothing are not deductible.
  - b. Most of the rent is not deductible.
  - c. Personal gifts given to others are not deductible.

- d. Everything else more or less falls into various shades of gray depending upon how the assets are transferred, and who or what owns the assets.
  - e. If an item is personal and belongs to the "owner," then it is not deductible. If it belongs to the Trust, then it depends on what it is.
  - f. Residential property can be transferred to the Trust, and the owner gives up all rights in the property. The expenses of the property belong to the Trust. By the way, the same applies to property transferred to a corporation.
3. Stepped-up basis of property transferred to the Trust: Any property transferred to a Trust should be appraised at the time of the transfer for the safety of both the Trust and the Grantor.
  4. The reduction or elimination of self-employment taxes: This is more complicated, and, again, must be handled per specific situation, depending upon the cash flow, and how distribution is set up in the Trust. If the Grantor works on contract and pays self-employment taxes, then he or she usually continues to do so.
  5. Reduction or elimination of estate or gift taxes: All Irrevocable Trusts, whether statutory or common law, reduce or eliminate estate and gift taxes.

Now, on to the subject of the Equipment or Services Trust. The following is the IRS definition:

The equipment trust is formed to hold equipment that is rented or leased to the business trust, often at inflated rates. The service trust is formed to provide services to the business trust, often for inflated fees. Under these abusive trust arrangements, the business trust may purport to reduce its income by making allegedly deductible payments to the equipment or service trust. Further, as to the equipment trust the equipment owner may claim that the transfer of equipment to the equipment trust in exchange for the trust Units is a taxable exchange. The trust takes the position that the trust has "purchased" the equipment with a known value (its fair market value) and that the value is the tax basis of the equipment for purposes of claiming depreciation deductions. The owner, on the other hand, takes the inconsistent

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position that the value of the trust units received cannot be determined, resulting in no taxable gain to the owner on the exchange. The equipment or service trust also may attempt to reduce or eliminate its income by distributions to other trusts.

We analyze this sentence:

...is rented or leased to the business trust, often at inflated rates.

The purpose of transferring assets into a Trust or a corporation is to prevent its loss in a lawsuit. The disconnection of ownership is the goal. How thoroughly that disconnection happens determines whether it can even be leased to a Business Trust. Assuming it is done correctly, and ownership is transferred successfully, the equipment can be leased. In an abusive Trust arrangement, usually the equipment is being leased back to the owner, who never properly exchanged any assets into a adequately formed Trust, e.g., where Trustees are functional.

The service trust is formed to provide services to the business trust, often for inflated fees.

Actually, if a Business Trust is formed, why should a Service Trust also be formed? If the Board of Trustees manages a Business Trust, then all the cash flow comes directly into the Trust, and not through the hands of the Grantor. Why not just pay the Grantor a consulting fee, or a distribution? The description of a Service Trust seems way too complicated.

Further, as to the equipment trust, the equipment owner may claim that the transfer of equipment to the equipment trust in exchange for the trust Units is a taxable exchange. The trust takes the position that the trust has "purchased" the equipment with a known value (its fair market value) and that the value is the tax basis of the equipment for purposes of claiming depreciation deductions.

This is clever, but the underlying issue is "substance of transaction." No functional Board of Trustees = no substance of transaction, so making a taxable exchange gets one nowhere. If fully knowledgeable Trustees are not involved, you own the equipment and will still own it no matter how much paperwork is shuffled around because you did not give it away to anyone. There was no real exchange.

The owner, on the other hand, takes the inconsistent position that the value of the trust units received cannot be determined, resulting in no taxable gain to the owner on the exchange.

TCUs are without value until there is a distribution. Each TCU changes in value according to the payout of the profit of the Trust from year to year. If there are five people who hold TCUs, and the profit at year-end is \$100,000.00, then each person gets a percentage based on the number of TCUs, or based on how the Board of Trustees determines the payout. It may decide that \$50,000.00 of the profit is put back into the business. This is why TCUs have no value, for they are constantly in flux. With this in mind, we can see that this "owner" is clearly confused concerning even what a TCU is, and how it is to be handled. Also, the term "owner" is muddled. Is the IRS talking about the owner of the TCUs, or the person who started the Trust?

The trust takes the position that the trust has "purchased" the equipment with a known value (its fair market value) and that the value is the tax basis of the equipment for purposes of claiming depreciation deductions.

This might be correct if the fair market value were accurate, and the Trust functional. To us this is somewhat garbled, but is something to ponder.

### **The Family Residence Trust**

Section II, paragraph 3 of the referenced notice informs us about Taxation of Non-Grantor Trusts. We find this a good and short definition of how a Trust should operate:

If the Trust is not a sham, and is not a Grantor Trust, the Trust is taxable on its income, reduced by amounts distributed to Beneficiaries. The Trust must obtain a Taxpayer Identification number and file annual returns reporting its income. The Trust must report distributions to Beneficiaries on a Form K-1, and the Beneficiary must include the distributed income on the Beneficiary's tax return.

So far, all scam Trust cases that we have reviewed have not reported distribution properly. In fact, they have not reported distribution at all.

Notice 97-24 describes the Family Residence Trust as having received residential property that is rented back to the owner, but the owner has not paid any funds to the Trustees to prove that the property has been rented.

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Here is the actual description:

The owner of the family residence transfers the residence, including the furnishings, to a trust. The parties claim inconsistent tax treatment for the trust and the owner (similar to the equipment trust). The trust claims the exchange results in a stepped-up basis for the property, while the owner reports no gain. The trust claims to be in the rental business and purports to rent the residence back to the owner; however, in most cases, little or no rent is actually paid. Rather, the owner contends that the owner and family members are caretakers or provide services to the trust and, therefore, live in the residence for the benefit of the trust. Under some arrangements, the family residence trust receives funds from other trusts (such as a business trust) which are treated as the income of the trust. In order to reduce the tax which might be due with respect to such income (and any income from rent actually paid by the owner, the trust may attempt to deduct depreciation and the expenses of maintaining and operating the residence.

We start by analyzing this sentence:

The owner of the family residence transfers the residence, including the furnishings, to a trust.

Transferring residential property to a Trust is legal, and if a person wants to include the furnishings, that person may under previous circumstances we described in Volume I, although it does not make much sense. Items transferred to a Trust should have a lasting value, and we would recommend that if certain furnishings were worthy of being transferred to a Trust, they should be put in a separate Trust. First of all, the transfer of property into any Trust requires it to be recorded at the county in which it belongs, and second, the county will not accept furnishings to be included in a property transfer. So, this first sentence may be misleading, the people who participated in this arrangement were uninformed, and a large amount of information is missing.

The parties claim inconsistent tax treatment for the trust and the owner (similar to the equipment trust). The Trust claims the exchange results in a stepped-up basis for the property, while the owner reports no gain.

Most counties accept the transfer of property into a Family Trust, or its transfer to another family member without a declaration of financial value. Property transferred correctly into a Family Trust, whether it is commercial, residential property or other,

is taxed by the county on the Fair Market Value. Where there seems to be a problem with the statement just quoted, is the term “stepped-up basis.” Again, there is a vast hole in the data provided. What are these Grantors doing, and what does it have to do with a stepped-up value? There is no explanation. Left in the dark, we can only assume, by the scam Trusts that we have reviewed, that the Trust paperwork claims that the property was put into Trust, and never recorded under the name of the Trust and the Trustees in the county. As you can see, we need more pertinent details to discern this matter.

The trust claims to be in the rental business and purports to rent the residence back to the owner; however, in most cases, little or no rent is actually paid. Rather, the owner contends that the owner and family members are caretakers or provide services to the trust and, therefore, live in the residence for the benefit of the trust.

The problem here is the mechanics. We have a Trust in which residential property is placed. Where is the cash flow to support the property? How do the utility bills get paid? Who pays the taxes? Is this a stand-alone Trust? Here sits a house without a cash flow. So, does the Grantor put the house in Trust and pay the Trustees to rent it? Do the Trustees, then put the money in their pocket? Or does the Grantor pay himself or herself? Where is the cash flow, in what direction, and how does it work? Since we do not know, we cannot imagine what is happening here. We have the same problem with the caretakers. Who is paying them to keep the house? Where are the funds coming from? Now, if Party A purchased the house and said to Party B that Party B could continue to live there if it is kept up, and Party A paid Party B to keep it up, what’s the problem? No problem, no questions, because Party A is also paying for the utilities and the taxes, and party A can sell the property at any time, without the consent of Party B. The same is true for a person who buys a business (Party A) and asks the previous owner (Party B) to stay on during the transition period, or for as long as Party A wants the previous owner to be part of the business. We believe that the entire issue with Caretakers has to do with who actually owns the property

Under some arrangements, the family residence trust receives funds from other trusts (such as a business trust) which are treated as the income of the trust. In order to reduce the tax which might be due with respect to such income (and any income from rent actually paid by the owner), the trust may attempt to deduct depreciation and the expenses of maintaining and operating the residence.



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Why would a Business Trust give funds to a Residential Trust? Is it renting space to store equipment? Is it renting the house? Again, we are clueless as to what is really going on here. Normally, there is no cash flow between a Business Trust and a Residential Trust, other than a distribution to the Residential Trust that is filtered through to the Beneficiaries after the deduction of expenses. There is a proper way to handle a transaction similar to this, but there is not enough information here, and we wonder if this was deliberately poorly written so to confuse all who ponder it.

### The Charitable Trust<sup>90</sup>

The true purpose of a Charitable Trust is for the benefit of a charity. *In Fausner v. Commissioner*, 55 T.C. 620 (1970) supposed charitable payments made by a Trust are not deductible charitable contributions where the payments are really for the benefit of the owner or the owner's family member.

The IRS describes an abusive Charitable Trust as follows:

The owner transfers assets to a purported charitable trust and claims either that the payments to the trust are deductible or that payments made by the trust are deductible charitable contributions. Payments are made to charitable organizations; however, in fact the payments are principally for the personal educational, living, or recreational expenses of the owner or the owner's family. For example, the trust may pay for the college tuition of a child of the owner.

Here is the analysis:

The owner transfers assets to a purported charitable trust and claims either that the payments to the trust are deductible or that payments made by the trust are deductible charitable contributions.

A Charitable Trust is, like all other Trusts, an individual. As an individual it must generate its own cash and distribute it accordingly. The proper way for a Charitable Trust to function is to have a bevy of investments that generate ample cash, and the Board of Trustees doles it out to various worthy charities. This, of course, cultivates tremendous support, and it spawns a political agenda. That is, lots of money, lots of agreement, one pot, and someone ambitious comes along and wields power. The power can be for good or evil. For example, a Charitable Trust for the benefit of the homeless

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<sup>90</sup> See Appendix A, Sample Format 5 for suggested wording.

can have enough funding to pay for lobbies to get dramatic legislation passed that addresses the issues of the mentally ill, and educational opportunities to get people off the street.

So, what has happened in our scam Trust? We are unclear about what got transferred to the Trust to generate the cash flow, but it seems that there are “payments” to the Trust, which is odd. Funding a Charitable Trust happens when there is sufficient money to give away. If the person who started the Trust needs to make payments, something is not exactly right. Apparently these payments made to the Trust were taken as a tax deduction. To do that, you need to establish the Trust as a 501(C)(3), otherwise, there is no tax deduction.

Payments are made to charitable organizations; however, in fact the payments are principally for the personal educational, living, or recreational expenses of the owner or the owner’s family.

This does not make any sense at all. A Trust set up for a charity **does not pay for family expenses**.

For example, the trust may pay for the college tuition of a child of the owner.

There is a Trust that can be set up entirely for educational purposes: funds to pay for the education are only deductible, though, under certain circumstances. Otherwise, they are treated as a disbursement to the student, who pays taxes on them. Paying for a child’s education does not happen through the vehicle of a Charitable Trust.

### **Taxation of Nongrantor Trusts**

Section II, paragraph 3 of the referenced notice informs us about Taxation of Non-Grantor Trusts. We find this a good short definition:

If the trust is not a sham, and is not a grantor trust, the trust is taxable on its income, reduced by amounts distributed to Beneficiaries. The trust must obtain a taxpayer identification number [TIN] and file annual returns reporting its income. The trust must report distributions to Beneficiaries on a Form K-1, and the Beneficiary must include the distributed income on the Beneficiary’s tax return.

We learned by reading court and tax cases, and from this core information, we hope you get more clarity.

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## Chapter 16: Absolute Musts

**J**ust when you think you might have a grasp on the intricacies of a Trust, we give you more details to build your fortress of wealth. The Trust Documents are not enough. Even though we state these are absolute **Musts**, they are not necessarily immediately needed. Once a Trust generates a strong cash flow, this level of additional coverage is clearly a good idea.

### **Extra Documentation**

There is extra documentation beyond the Indenture to keep an Irrevocable Trust alive and to minimize threats that may drain funds. This paperwork prevents the Trust's depletion because of unforeseen circumstances. Every Trust, whether Irrevocable or not, should have at least for the Grantor, and if possible the spouse and Beneficiaries, the following as part of the initial set up:

1. Health Insurance
2. Durable Power of Attorney for Health Care
3. Medical Directive
4. Pour-Over Will

Should these four items not be an adjunct to the Trust, then the Trust funds can be used to save or prolong the life of the Grantor or a Beneficiary. In an Irrevocable Trust, the Beneficiaries must agree to use the assets to support the Trust member in distress, and in a Revocable Trust, the assets are an automatic collateral for the Grantor.

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If Beneficiaries do not agree to use the assets in an emergency, then funds remain safe. The problem becomes guilt and internal family politics. Who would be so hard-hearted?

### **Health Insurance**

Although not exactly cost-effective, health insurance becomes an expense that may save the day. Financial Analysts tell us this: if you are healthy, health insurance is expensive. You pay for the insurance, and then pay for the deductible. It is common for a Trust to shell out thousands for health insurance during the year--with zero return. Many times, the policy does not cover the specific medical needs which later arise. It seems the only solution is a crystal ball and a best guess. Nevertheless, consider it an insurance package and an expense to keep assets safe. One of the solutions may be to have only a catastrophic care or long-term health-care policy, financing the rest as the need arises.

We might add here, too, it is best to find alternative health-care solutions, such as natural healing modalities, to prevent common ailments in old age.

### **Durable Power of Attorney for Health Care (DPAHC)**

Some people confuse the DPAHC with health insurance. They are not the same. The former is a medical expense, the latter a legal expense. The DPAHC applies only to the Principal, the one for whom the DPAHC is created. When no longer able to make health-care decisions, this document allows another person to act on the Principal's behalf. This other person is named a health-care agent.

For example, if you are in a car accident and the doctors advise your health-care agent you will never recover from the coma, the health-care agent has the authority to have all life-support equipment turned off. This allows you to pass in peace. Without a DPAHC in place, your body can be kept alive indefinitely. If Trust funds pay the medical bills, then the life-support stops when funds are exhausted.

The DPAHC can be used in times when you are temporarily unable to make your own decisions. If, in this circumstance, the doctors predicted your recovery, then during the time you are unable to decide, the health-care agent acts on your behalf choosing the suitable treatments to assure your full recovery.

We will cover the details of the DPAHC later in this chapter.

There are large legal manuals about the DPAHC, and some lawyers specialize in this area. You can also find forms and information on the Internet. We did not find it too difficult to get the basics<sup>91</sup>.

### ***Revocation***

Changing the conditions within the document when an addendum is needed may not enough, but may require cancellation of the DPAHC, and the creation of a new one. Reasons for using a revocation are:

1. The named agent has died or become disabled.
2. You have lost confidence in the appointed agent.
3. You have changed your mind about instructions for:
  - a. Organ donation.
  - b. Burial instructions.
  - c. Other complex matters.

### **Medical Directive**

Once the DPAHC is in place, use a Medical Directive to advise your doctor and family. It is a summary of the DPAHC, advising key people of your basic wishes. For example, if in your DPAHC you give your organs to a particular university, the Medical Directive lets your doctor know. Here, also, the medical personnel know of treatments you want applied to aid in a full recovery.

The Internet provides a thorough writeup on this subject.<sup>92</sup> We suggest you read it before preparing the DPAHC and the Medical Directive. If you do not have access to the Internet, write to:

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<sup>91</sup> Keene Health Care Agent Act, Section 4770-4779, California.

<sup>92</sup> Charles P. Sabatino, J.D., "10 Myths about Advanced Medical Directives," ABA Commission on Legal Problems of the Elderly  
<http://www.abanet.org/aging/publications/docs/10legalmythsarticle.pdf>

## **Art of Passing the Buck, Volume II**

Commission on Legal Problems of the Elderly  
American Bar Association  
740 Fifteenth Street, NW  
Washington, D. C. 20005-1922  
Telephone: 202-662-8690  
Fax (202) 622-8698

### **Pour-Over Will**

All the items you did not put in Trust can “pour” into your Trust when you die. This may not be the best solution, though. Many of those items you did not put into Trust were excluded for a good reason, and here is the document you use to earmark where your favorite jewelry, furniture and other odds and ends go. The family photo album may be a prized possession that you kept out of the Trust. Now is the time to “Will” it to one of the family members.

You choose an Executor to this Will, and he or she acts in concert with the Trustees to sort out your various belongings. The Executor should not be one of the Trustees, or anyone associated with the Trust who would have an interest in getting your worldly goods.

The Pour-Over Will can be simple, stating everything that you have now belongs to the Trust, or you can parcel out items after your passing.

The Pour-Over Will also contains a detailed description of how you want your funeral service conducted, what songs to sing, your burial or cremation choices, and where to spread or keep your ashes. You can choose the religion, church and the party given at your passing. Yes, we said “party.” Some Pour-Over Wills state the person passing would like to have a “roast,” in his or her honor!

### ***Originals***

There should be at least two originals of the last three agreements. Keep one copy in a separate location as part of the Trust original documents. The other copy belongs to the Principal.

Some doctors and some states do not accept photocopies. In an emergency, it is best to present only the original document. This is why two originals need to be on file. Advise named alternative health-care agents where originals are kept. You may want your

lawyer to keep an original, or with the Secretary of State in which you live may be a good place to file an original.

### **Nitty-Gritty Details of the DPAHC**

The following is a basic outline of what is in a DPAHC. As mentioned before, consult with professionals. This list gives you only an idea of what to include, and what is in a full DPAHC.

- Warning to person signing this document
  - This DPAHC Health Care states you have read the document you sign and know you are giving another person the power to make health-care decisions for you.
  - This part of the document cannot be less than 10 pt. type size and should be entirely capitalized
- Designation of the health-care agent
  - Most of the time the spouse becomes the health-care agent. If you are not married, then it is a close friend or other family relative.
  - All the health-care agent's contact information is on the DPAHC. The Principal, the one who the DPAHC is for, must update the documents, or provide updated information to the health-care agent about changes.
  - Select alternates for health-care agents. We suggest a minimum of two because the primary health-care agent may be unavailable during a crisis.
  - Professionals in the health-care field cannot be your health-care agent. This means neither your family doctor nor associated staff, qualifies.
- The jurisdiction in which your DPAHC applies
  - The name of your state.
  - If you move, you need to change the DPAHC.
  - You can file the DPAHC with the state government.



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- General statement of authority granted includes the Principal's wishes about
  - Keeping, refusing or withdrawing life-prolonging care, treatment, services and procedures.
  - Limits to this authority here or under special terms.
- Statement of wishes, special rules and limits.
  - Description of conditions for removal of life-prolonging care. Check with professionals about suggested wording.
  - Special treatments given before life-prolonging care removal. This can include hands-on healing, natural cures, prayer and consultations with those who may have spiritual training.
  - Organ donation choices and specifics
    - Organ donation
      - To what organization?
      - If you cannot be a full donor, then a partial donor and what does that include?
      - Do you want to include the body or only the organs?
      - What specific organs do you want to donate?
    - Do not want to be an organ donor
      - If you are over 50 years old, your organs are probably not harvestable.
      - Give any particular reasons or instructions
      - If there is an "unless" criteria, describe it
    - Ways to go (style of lift off)
      - Burial
        - \* Where?
        - \* What religion?
      - Cremation

- \* Where?
  - \* What religion?
  - \* Where should the ashes be kept or scattered?
  - Mummification
  - Preservation in nitrogen (frozen)
    - \* Whole body
    - \* Head only
    - \* DNA only
- Treatment in which full recovery is expected
  - Comfort
  - Pain medication
  - Kept at home
- Statement of resuscitation if terminally ill
  - Wear a bracelet about the condition.
  - Passing if there is a choice between life and dying.
    - Procedures to bring one out of a coma are known by some spiritual and healing groups.
    - Procedures to employ before determination of passing.
- Statement about terms in this DPAHC that your wishes apply to other states.
- Statement about disclosure of the Principal's physical or mental health for the health-care agent. This includes
  - Request, review and receive information.
  - Execution of documents
  - Consent of disclosure

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- Health-care agent has authority to sign documents, waivers and releases
  - Refusal to allow treatment
  - Leaving hospital against medical advice
  - Any waivers and release of liability
- Health-care agent's authority about: autopsy; anatomical gifts; disposition of remains
  - Approving of an autopsy
  - Disposition of part or parts of the body applying to the laws of the state
  - Disposition of remains
- Gifts to Health-care agents
  - If there are specific gifts to health-care agents, list them; otherwise, no gifts can be given.
  - Excluded from this is a health-care agent that is covered by the Pour-Over Will terms or the Trust.
- Duration
  - How long do you want this Durable Power of Attorney to be in effect?
  - Do you want it to renew automatically after so many years, unless otherwise mentioned?
  - No end date specified.
- Conservator of the Person
  - If you need long-term physical care, who should be court-appointed?
  - There is no need to name a Conservator, but it is a good idea to name a person now.

- Signature
- Witnesses
  - There are lengthy protocols about witnesses who must have sufficient identification and must certify your state of mind.
  - There must be two witnesses, and they cannot be people named in the DPAHC.
  - It seems a notarized statement is not sufficient, as a notary does not know the Principal personally.

### **Low-down on the Medical Directive**

- The current date when given to the medical personnel.
- Statement about your feelings on death and old age.
- Statement about incurable or irreversible injury, disease, or illness and your wants about diagnosis. Such as, you want certification by two doctors about your condition.
- Your ideas, limits and uses on life-sustaining procedures and when to be withdrawn.
- Statement that you have created a Durable Power of Attorney for Health Care and who is the named health-care agent.
- Statement that you be allowed to die.
- Any relevant information on your current medical condition that may impact the decisions of long-term illness treatment or whether you are pregnant.
- Statement about your wishes carried out by law.
- Statement of personal convictions and beliefs about death.
- Your choices for long-term care.

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- Statement about bodily remains and burial or cremation, and a direction that full information is in the Pour-Over Will or the Durable Power of Health Care.
- Statement that you can revoke the Medical Directive.
- Statement of your state of mind and emotions at the time you create this document, or formal letter.
- Two witnesses with their full address and telephone numbers.

## **Pour-Over Will's Pesky Particulars**

The Pour-Over Will is the last Will and Testament of the Principal and supersedes all other Wills. These are the standard subjects to include:

- Your name and location, including county.
- Statement of lawful age and mental condition.
- Not acting under duress, menace, fraud or undue influence.
- Revokes all Wills, testament, and codicils made until now.
- Who pays:
  - Funeral expenses,
  - Personal debts
  - Administration expenses.
- To whom your personal property now belongs. Refer to schedules, lists, or name the Trust.
- Appointment of Executor, who is often the same person as the health-care agent, but for the sake of that person's state of mind, it might be better to choose someone else to be the Executor. The burden of taking care of your dying and your burial might best be shared with another close family member.
- Details of what the Executor can do, such as handle real estate and brokers.

- Designation of others to serve as Executor if the first choice is not available.
- Description of the funeral ceremony
  - Religion
  - Place
  - Songs
  - Message to those who attend
  - Theme
  - Social gathering after the ceremony
- Details of burial proceedings or cremation
  - What does your personal estate pay for, and what does the Trust pay for?
  - Place of burial or cremation
  - Reference to the Durable Power of Attorney for Health Care for details about organ donation, or you can repeat that information here.
- Statement about Beneficiaries or remaindermen who may challenge the terms, and the results of any challenge.
- Signature
- Three witnesses with addresses

If you discover pondering these issues gives you a headache, it is nothing compared to the troubles incurred when they remain unanswered.

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## Chapter 17 : Family Affairs

**T**his chapter addresses joint property and guardianship. The first is an essential step for those married, and the second gives added protection to children under 16 years old. In most states, after 16 an adolescent can choose his or her own guardian.

### **Spouses and Joint or Community Property**

Because of joint or community property laws in various states, if you are married, your spouse must agree to setting up a Trust, or you cannot proceed.

Based on experience, here is a test to see how you and your partner will fare in your journey to reformat assets. See where you fit in these descriptions of couples, for some are not qualified to meet the challenges in the more sophisticated realms of long-range family planning.

Marriages range from blissful to raging war zones. Even the most happy couple, appearing in a comfortable routine, may not be in the best relationship. In a perpetual state of robotic behavior, the two remain secure in their lack of knowledge. In reality, there is no deep commitment. As an extension of their contentment, both partners lack the motivation driven by discomfort. This uncomfortableness ranges from an awareness of the costs of probate, the need to ensure the family is prosperous or, conversely, taxes drain earning power. Without some annoying or irritating issue, there is no motivation to get any Irrevocable Trust. Because the effort takes focus and determination, this couple is not a candidate.

The couple which has spats and short argument may move through life with cohesive objectives. A perpetually arguing couple, though, remains in the survival cycle with little time left over to plan. The former is the better candidate for incorporating long-



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range financial planning, while the latter cannot fully participate. With no agreement, there can be no gain.

Estate planning becomes tricky if only one partner is active and participatory in the larger arena of life, while the other stays within a comfortable routine, uninvolved in controversial or challenging matters. In the realm of estate designs, the less involved the partner, the more dangerous. If and when this partner awakens to matters of financial well-being, he or she becomes lost and overwhelmed. If tricked into an agreement he or she did not understand, explosive results can bring an unhappy ending, with a disastrous financial loss. Being confused, the one to awaken may blame the other. Without enough education, this uninformed spouse may destroy carefully laid plans. By using probate against a Trust, an estate can end. This means there may have been a Trust set up until the Grantor died, whereupon the spouse walked into Probate Court claiming coercion. The spouse now wants all the assets inside the Trust. This is not likely to be a winning argument, but the sheer continual whining and petty legal efforts can collapse those of the greatest will. Simply stated, do not trick or convince your partner to do anything beyond your partner's scope of understanding.

Here lies the difficulty. If community property gives the surviving spouse all, then how are assets transferred into a Trust?

Not only do both partners need to align their objectives and to make cohesive decisions about the best actions to take, but they need to remove the assets out of community or joint property status before placing them into an Irrevocable Trust.

In a Statutory Trust set up by a licensed legal profession, this division of property may not be so necessary. When using a Private Trust, where the family chooses to set up its own estate planning, thus taking responsibility for its own future, separation of property becomes a must and almost a ritual.

Based on the community property laws of California and using the Probate Code as a basis to outline significant points, we take you through, step-by-step, what property rights the spouse can waive. For those in other states, find applicable sections in your state Probate Code.<sup>93</sup>

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<sup>93</sup>

States have different names for the court handling issues of Trust, Wills and those who die intestate.

For an Irrevocable Common-Law Trust to be properly set up, both partners in a marriage need to surrender their joint or community rights, and then each places property into the Trust. Do this by dividing the property by each spouse selling the right to the other for twenty-one dollars in silver or gold coin. Silver or gold dollars are constitutional money, and so far are the only legal tender in the United States.<sup>94</sup> It is best to separate assets evenly, so when the property exchanges into the Trust, the TCUs given to each are fairly even. There is an outline of points to include in a Joint and Individual Property Agreement later in this chapter.

Both spouses need to waive their rights. An outline of what to surrender and the procedure to do this waiver is in the California Probate Code Section 141(a). We have extracted the more technical references for ease of reading and placed them into the footnotes. Further, we have edited this to be more reader friendly, so we recommend you take the time to read the exact wording from your applicable probate Code.

### **Waiver<sup>95</sup>**

As used in this chapter, “waiver” means a waiver by the surviving spouse of any of the rights listed [below] whether signed before or during marriage.<sup>96</sup>

### **Rights Which May Be Waived<sup>97</sup>**

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<sup>94</sup> Martin V. Mahoney, Justice of the Peace, Credit River Township, Scott County, Minnesota, January 6, 1969. Minnesota Statutes Annotated 532.38; and Ellen Brown, *The Web of Debt: The Shocking Truth About Our Money System—The Sleight of Hand That Has Trapped Us in Debt And How We Can Break Free*, Third Millennium Press, Baton Rouge, Louisiana (2007).

<sup>95</sup> The act to relinquish voluntarily a right, claim, privilege. A formal written statement of such relinquishment. *Webster's New World Dictionary of the American Language, Second College Edition*, William Collins+World Publishing Co., Inc. Cleveland and New York. (1974)

<sup>96</sup> Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.

<sup>97</sup> This section is renumbered and edited to be in conformity with this book and does not reflect the original numbering in the California Probate Code.

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The right of a surviving spouse to any of the following may be waived in whole or in part by a waiver under this chapter:

- Property that would pass from the decedent by intestate succession:

Any claim to joint ownership of assets that would normally go to the surviving spouse, even if there is no Will, can be waived.

- Property that would pass from the decedent by testamentary disposition in a Will fulfilled before the waiver.

The spouse can give up his or her rights to the property if a Will creates a Trust for the spouse, or for the children and the spouse. This only applies if the waiver is dated after the Will.

- A probate homestead:

A homestead is a right given by the government to hold real estate in fee simple for the benefit of one's family without fear of debt collection.

- The right to have exempt property set aside:

This refers to property held in Trust or covered by allodial title.

- Family allowance:

Any funds received as an allowance from one's family can be waived.

- The right to have an estate set aside<sup>98</sup>

To relinquish your claim to any estate of the other person.

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<sup>98</sup> Probate Code Chapter 6 (commencing with Section 6600) of Part 3 of Division 6.

- . . . “decedent's estate” means all the decedent's personal property, wherever located, and all the decedent's real property located in this state.<sup>99</sup>
- For the purposes of this chapter:
  - Any property or interest or lien thereon which, at the time of the decedent's death, was held by the decedent as a joint tenant, or in which the decedent had a life or other interest terminable upon the decedent's death, shall be excluded in determining the estate of the decedent or its value.
  - A multiple-party account to which the decedent was a party at the time of the decedent's death shall be excluded in determining the estate of the decedent or its value, whether or not all or a portion of the sums on deposit are community property, to the extent that the sums on deposit belong after the death of the decedent to a surviving party, Pay-on-Death Account (P.O.D.) payee, or Beneficiary.<sup>100</sup>
  - The right to elect to take community or quasi-community property against the decedent's will.

This means to demand payment!

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<sup>99</sup> Probate Code Chapter 6, Subject to subdivision (b), for the purposes of this chapter . . .

<sup>100</sup> As used in this paragraph, the terms “multiple-party account,” “Party,” “P.O.D. payee,” and “Beneficiary,” have the meanings given those terms in Article 2 (commencing with Section 5120) of Chapter 1 of Part 2 of Division 5. (Stats.1990.c.79 (A.B.759), § 14, operative July 1, 1991).

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- The right to take the statutory share of an omitted spouse.
- The right to be appointed as the personal representative of the decedent's estate.

You relinquish your right to be an Executor, Trustee, or any other type of administrative agent regarding the other person's property.

### Partial Surrender

Because most people will not put all assets into an Irrevocable Trust, many provisions listed above are not applicable to joint property relinquished prior to putting assets into an Irrevocable Trust. Section 6 of the California Probate Code is the only portion we address as referenced in the following section. The other areas subject to waiver are at your own discretion, but are not directly applied to assets placed into Trust.

### Waiver Requirements, Consequences and Enforceability<sup>101</sup>

The following, extracted from the Probate Code, are summarized.

1. A waiver must be in writing.
2. Enforceable unless the surviving spouse proves any of the following:
  - a. Fair and reasonable disclosure had not occurred.
  - b. Not represented by independent legal counsel at the time of signing the waiver.
  - c. Provisions of the waiver are unconscionable.
3. The waiver is enforceable if:
  - a. It provides a fair and reasonable disposition of the rights of the surviving spouse.

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<sup>101</sup> California Probate Code §§ 142, 143, 144, 145. Other states use different names for this section of law.

- b. The waiving spouse had adequate knowledge of the property and financial obligations.
  - c. Lack of consideration is not a defense to enforcement of the waiver. This means failure to consult with others prior to signing the waiver.
- 4. The waiver pertains to “all rights,” unless otherwise stipulated.
- 5. The written agreement needs:
  - a. To be signed by each spouse or prospective spouse.
  - b. A fair and reasonable disclosure of the property or financial obligations.
  - c. To include advice by independent counsel.
- 6. The waiver can be altered, amended and revoked in writing. Once assets have been placed in Trust under the names of Trustees for the Beneficiaries, the assets cannot be returned, except by the approval of the Trustees.

### **Joint and Individual Property Agreement**

We suggest the following subjects for inclusion in an agreement to separate property between a husband and wife prior to transferring property to an Irrevocable Trust.

- 1. The state and county in which the husband and wife currently reside.
- 2. The names of the parties, date and place of marriage.
- 3. A general statement about properties acquired since the marriage, and a need to discern between those properties and assets belonging to each prior to the marriage.
- 4. Include in the agreement of the parties:
  - a. Statement of consultation with professionals.
  - b. What the professionals advise about:
    - i. How title is held.

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- ii. How inherited property is handled.
  - iii. How to convert property to joint or community or vice-versa.
  - iv. Legal consequences of separating property.
  - v. How divorce impacts the separation of property.
- c. A statement that the property listed on an attached schedule as community or joint has been acquired in the marriage.
- d. The intent of the document is to clarify:
  - i. What is owned by either party separately.
  - ii. What is owned together.
  - iii. Reasons to place property into an Irrevocable (Common-Law) Trust.
- e. Understanding of the legal consequences of placing property into Trust.
- f. A statement about life insurance:
  - i. It remains the property of each of the spouses separately.
  - ii. It can be put into the Trust.
- g. Agreement to buy from each other.
- h. Agreement that the spouse who holds legal title to the property has the right to place it into Trust.
- i. Agreement that once property is placed into Trust it belongs to neither party. The property is controlled by a Board of Trustees, or a Trustee.
- j. A statement that no undue influence has been used. The motivation is to provide a financially secure basis for Beneficiaries and to provide long-term care and support for the family. Include any other reasons.
- k. This agreement is based on the confidential relationship between husband and wife, this imposing a duty of the highest good faith and fair dealing. Neither party has taken any unfair advantage of the other.

- l. Acknowledgment of the fiduciary responsibility of the husband and wife is subject to the same rights and duties of nonmarital business partners.
- m. The documents needs to be notarized, but we think three witnesses who know both people may be more appropriate. These witnesses need to be agreeable to testify that both parties are willing participants to separate joint property and to place assets into Trust.

## **Divorce**

We have only had one incident where the couple changed its mind due to divorce, after placing assets in Trust. We covered this in Volume I, where there was a legal battle over property put in Trust and the Trustees eventually returned it.

The key here is both parties must be highly conscious of their intentions for long-term family benefits. Should either party think there may be a divorce, and want to ensure the children are safe, put assets into Trust prior to the divorce. This takes the entire legal battle over assets out of the equation as nothing belongs to either spouse leaving nothing over which to fight. This also keeps the children financially guarded, ensuring that the opportunity for missed alimony or child support payments will not be a factor, as the Trust continues to pick up the bill.

As shown in Romance and Trust in Volume I, this is also a good way to handle alimony payments. Transfer assets to a Trust, where the ex-spouse or soon-to-be ex-spouse deals with the Trustees over financial matters, while you start your life over.

## **Joint Property Separation**

### ***Schedule A1***

Using the information found in Chapter 4 about Trust structuring, we transfer the asset details given on Table F - Assets and Trust Capital Units to the Joint Property Agreement.

The Joint Property Agreement needs to be signed and dated at least one or two days prior to the date of the Trust Indenture.

In this example, the assets are divided as evenly as possible between the husband and the wife. Because of the category of equipment, there is an uneven distribution. The large equipment could be separated by item, with the wife putting some of the equipment into the S. M. Meyers Trust.



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Along with the Joint Property Agreement are bills of sale. You will find a sample in the Appendices.<sup>102</sup>

### Sandra Jay Allen and Joseph Allen

#### Schedule A1

Ownership Status	Property Description	Asset Value	Sold To
Joint	Residential Property	\$ 360,000.00	Sandra Jay Allen
Joint	Large Equipment	\$ 2,125,000.00	Joseph Allen
Joint	Equipment Leases, Partnership, Loan Payments	\$ 1,000,000.00	Sandra Jay Allen
Joint	Initial Cash	\$ 30,000.00	Sandra Jay Allen
Personal	Oppenheimer Mutual Funds	\$ 200,000.00	Joseph Allen
Joint	Dain Rauscher Stock Portfolio	\$ 100,000.00	Sandra Jay Allen
Joint	Promissory Notes, Contracts, Management	\$ 50,000.00	Sandra Jay Allen
		\$ 3,865,000.00	

Initials

\_\_\_\_\_  
Sandra Jay Allen

\_\_\_\_\_  
Joseph Allen

<sup>102</sup>

*Schedule A2*

A2 shows the Trust names which would have not been known prior to creating the Trust. We have labeled it a Schedule of Exchangers, although in the final Trust documents, it would probably be reformatted. This gives you an idea of how these assets are divided and flow into and through the Trust system.

**Allen-Jay Family Trust***Schedule of Exchangers*

<b>Property Description</b>	<b>Trust Name and Schedule</b>		<b>Asset Value</b>	<b>Exchanger</b>
Residential Property	Dawson Trust - A	\$	360,000.00	Sandra Jay Allen
Large Equipment	S. M. Meyers Trust - A	\$	2,125,000.00	Joseph Allen
Equipment Leases, Partnership, Loan Payments	Smithers Family Trust - A	\$	1,000,000.00	Sandra Jay Allen
Initial Cash	Allen-Jay Family Trust - A	\$	30,000.00	Sandra Jay Allen
Oppenheimer Mutual Funds	Allen-Jay Family Trust - B	\$	200,000.00	Joseph Allen
Dain Rauscher Stock Portfolio	Allen-Jay Family Trust - Exhibit B	\$	100,000.00	Sandra Jay Allen
Promissory Notes, Contracts, Management	Allen-Jay Family Trust - Exhibit C	\$	50,000.00	Sandra Jay Allen
		\$	3,865,000.00	

Initials

\_\_\_\_\_  
Sandra Jay Allen

\_\_\_\_\_  
Joseph Allen

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### Guardianship

Guardianship is applicable to most children under sixteen years old. Most parents find it difficult to choose who should keep their children if the parents can no longer be available or responsible. To consider one's possible demise is unpleasant. When forming a Trust, though, complete guardianship paperwork. The Trustees should insist on having the guardianship information to activate should a misfortune occur.

If an invalid adult is a Trust Beneficiary, create guardianship papers for him or her.

A search on the Internet provides a plethora of information. The county and states handle guardianship. Many forms are available to download, as well as pamphlets giving a thorough explanation of the court procedures. This chapter is not focusing on legal details, as they are available from courts and appropriate legal counsel.

We focus on the Trust's link with the guardianship format. Contrary to what you might believe, the court's involvement with guardianship is not mandatory. It becomes involved because guardians or parents act irresponsibly. Some of these problems include: parents' changing their mind, disrupting the child's stability, and guardians who change their mind deciding that taking care of the child is too much for them. When these events occur, it is best to go through the courts to bring stability into the child's life.

As mentioned earlier, children over the age of 16 may be emancipated in most states. The emancipation of these children is up to the child. If the Board of Trustees, though, supplies their financial support, the child remains their financial responsibility and it is in the Board's discretion how to handle the child's disbursements.

Based on the California Probate Court<sup>103</sup> forms we provide the following information. Check with your state for proper procedures.

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<sup>103</sup>

Other states use different names: Court of Probate (Connecticut), Surrogate's Court (New York), Ordinary Court (Georgia), Orphan's Court (Delaware, Maryland, New Jersey, Pennsylvania), and Prefect's Court (New Mexico).

### **Private Guardianship Authorization**

Parents can give consent to another qualified family member or person to be the legal guardian of their child. There are several reasons they may choose to do this; here are some of them:

1. Opportunities are greater with another family.
2. Because of hardship, the parents feel they cannot support the child.
3. Because of an unhealthy home life, relatives feel the child is in a safer environment away from the parents.
4. The child requests to live with other members of the family.
5. Because of work opportunities, the parents move and the child needs to finish school where he or she now lives.

To invoke private guardianship, the parents need either to create a form known as "Guardianship Authorization," or complete one available through the courts. This identifies the child, mother, father and proposed guardians, and emergency numbers. The form also includes several statements by the parents or parent confirming the authority given to the guardian, such as:

1. Your current relationship to the child and that you have legal custody. You give full authorization and consent for your child to live with the proposed guardian or guardians and to provide a home for the child.
2. Permission to the guardian to act in your place and decide about the child's educational and religious involvement, and any other related areas.
3. Consent for medical treatment at school. You may need to fill out a separate medical and dental form to give overall consent. If there are specific medical issues, it is best to describe them in a separate document.
4. Permission to apply for benefits, a Social Security Number and U.S. Passport.
5. Time period covering this authorization.
6. The guardian's payment.

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7. A statement that you declare these facts to be true under penalty of perjury under the laws of your state.
8. Both parents sign, or if one has sole charge, then only one parent signs.

## **The Trust, The Child, and the Guardian**

Now that you have a basic idea how to set up a guardianship, we apply this information to the Trust.

### **Convincing a Judge**

Your children are Beneficiaries, and if you should suddenly leave, the Trust remains, with the assets designed for them. As you can see, there is no need to use a court to give permission to others to take care of your children. The Trustees, though, would like the alternative.

Within the Trust, there need to be instructions from you to the Trustees about whom you want to take care of your children. These instructions need to be clear enough to convince a judge, should a court-appointed guardian become necessary. This court-appointed guardian can be one of your siblings, your best friend, or a complete stranger. The Trustees may decide that it is not necessary for a court to become involved, and the private authorization you create is enough.

### **Financial Responsibility**

The major problem with getting a court involved is in proving financial responsibility. The resulting judicial process may compromise the Trust's privacy. Once documentation is available to the court, it is available to others. Our first recommendation is to avoid that if possible.

There are two legal formats for guardianship:

1. Guardianship of the child.
2. Guardianship of the child's estate.

The second is not a choice. The Trustees remain in charge of the child's estate. It is solely up to them if the guardian should handle funds for the child's daily needs or the Trustees handle the funds. The Guardian, though, needs to be paid, and to have a custodial account to cover monthly expenses for the child.

**Trust Documentation**

The following is a suggestion. After creation, keep one original in the Trust book, and give one original to the guardian or guardians:

1. Minutes describing the wishes of the parents about the child.
  - a. Attached to the Minutes is a recommendation for two guardians from the parents. These are stand-alone documents to pass to a court, if necessary.
  - b. Include the history of the child's experiences with the proposed guardians together with the qualities they have to make the parents believe these people will be good for the children. Add any long-range goals the parents share with them.
2. Official paperwork given to third parties who may get involved with the child's welfare. These include:
  - a. Authorization and Consent of Parent, Parents, or Legal Guardian
    - i. Temporary or long-term Guardian Authorization activated by two Trustees.
    - ii. A list of the authorizations given to the guardians.
    - iii. Names of the guardians.
    - iv. Signature and addresses of the guardians.
    - v. Notarized by the parents.
  - b. Medical details and preferences:
    - i. Doctor names and specialties including:
      - (1) Address, Telephone numbers.
      - (2) Other relevant information.
      - (3) Medical conditions.
      - (4) Treatments allowed and unauthorized.
      - (5) Family medical history.

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- ii. Health-care practitioners.
- iii. Health-care procedures.
- iv. Natural remedies and applications.

### Court-appointed Guardians

The following is a brief outline of the steps toward guardianship. It comes from the California Probate Code and is edited for ease of reading. Check with your state Probate Code for full wording.

1. §1501. Nomination of guardian or for particular property
  - a. Subject to Section 1502, a parent or any other person, identified as a nominator, may choose a guardian for property that a minor receives from the nominator:
    - i. whether before, during, or after the nomination.
    - ii. Including, but not limited to, property received by the minor by a gift, deed, Trust, will, succession, insurance, or benefits.<sup>104</sup>
2. §1502. Manner of nomination; time effective; resulting legal incapacity or death of nominator
  - a. A nomination of a guardian may be: In the petition for guardian appointment.
    - i. At the hearing on the petition.
    - ii. In a writing signed either before or after filing of the petition of guardian appointment.
  - b. Guardian nomination is effective when made. The exception is when, stated in writing, it is effective on specified condition or conditions. This includes, and not limited to, later legal incapacity or death of the nominator.

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<sup>104</sup> (Stats.1990, c. 79 (A.B.759), 14, operative July 1, 1991.)

- c. Unless the written nomination expressly otherwise provides, a nomination remains effective regardless of the legal incapacity or death of the nominator.<sup>105</sup>
3. §1510. Petition for appointment; contents
- a. A relative or other person for the minor may file a petition for guardian appointment. If the minor is 12 years old or older, he or she may file a petition for guardian appointment.
  - b. The petition specifies:
    - i. The name and address of the proposed guardian.
    - ii. The name and date of birth of the proposed ward.
    - iii. A statement of why the appointment is necessary or convenient.
  - c. The petitioner supplies the names and addresses of all the following:
    - i. The parents of the proposed ward.
    - ii. The person having legal keeping of the proposed ward
      - (1) If that person currently does not have the care of the proposed ward, or
      - (2) the person having the care of the proposed ward.
    - iii. The relatives of the proposed ward within the second-degree.
    - iv. For a guardianship of the estate, the spouse of the proposed ward.
    - v. Any person proposed as guardian for the subject ward under Section 1500 or 1501.
  - d. State if the proposed ward is a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services.

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<sup>105</sup>

(Stats.1990, c. 79 (A.B.759), 14, operative July1, 1991.)



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- e. The petition states if the proposed ward receives or is entitled to receive benefits from the Veterans Administration. Include the estimated amount of the monthly benefit payable by the Veterans Administration.
- f. If the petitioner has knowledge of any pending adoption, juvenile court, marriage dissolution, domestic relations, custody, or other similar proceeding affecting the proposed ward, the petition discloses the status.
- g. If the petitioners intend to adopt, state this in the guardianship petition, even if filing an adoption petition has not yet occurred.
- h. If the proposed ward is or becomes the subject of an adoption petition, the court will order the guardianship petition consolidated with the adoption petition<sup>106 107</sup>

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<sup>106</sup> (Stats.1990, c. 79 (A.B.759), 14, operative July 1, 1991 Amended by Stats.1992, c. 1064 (S.B.1445), 1.)

<sup>107</sup> Cross References Adoption: see Family Code 8500 et seq.

## Chapter 18: Suspicion, Terrorism and Agents

We live in a world where fear is lucrative. The controversial report from Iron Mountain<sup>108</sup> states that without war, there is no economy. Although many debunkers claim the report is a hoax, the reality of it remains. War is profitable. Terrorism even better. With a population where the media continues to report potential terrorist attacks, all kinds of “watching” slips into place—all for your safety. This creates lucrative profits for the spy and counterspy industry. Every tracking device imaginable is either already employed, such as the ones in your car, those on street corners, or is waiting to be stuck into your arm. The size of a grain of rice or smaller, everything you do financially and every where you go becomes traceable. With this in the wings, can personal acoustic monitoring be far behind?<sup>109</sup> As our social habits slide more toward scrutiny and final RFID-chip enslavement, we must become aware of the few remaining legal cures against invasions of privacy, and our rights.

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<sup>108</sup> *Report from Iron Mountain On the Possibility and Desirability of Peace*, Free Press, 1996. Cited in “Report from Iron Mountain” museum of Hoaxes [www.museumofhoaxes.com/iron.html](http://www.museumofhoaxes.com/iron.html). See also Wikipedia entry [http://en.wikipedia.org/wiki/The\\_Report\\_From\\_Iron\\_Mountain](http://en.wikipedia.org/wiki/The_Report_From_Iron_Mountain).

<sup>109</sup> Digital Angel Corporation, 490 Villaume Avenue, South St. Paul, MN 55075-2433. [www.digitalangelcorp.com](http://www.digitalangelcorp.com). See also, Sherric Gosset, “Digital Angel Lands in China: Will implantable tracking chips be used by totalitarian government?” *WorldNetDaily.com*, March 28, 2002.

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To further underline this tricky subject, the FBI can e-mail an attachment to your computer. Once part of your operating system, it “might store or communicate the recorded keystrokes.”<sup>110</sup>

The Bill of Rights<sup>111</sup> and privacy provisions in each of our state constitutions, remain our only hope. Our ancestors knew the evil of unchecked power. These constitutions bridle the aggressive domination of insane rulers—a common occurrence in our war-torn world. These documents reflect an evolution of the rights of the people prior that began much earlier than the creation and inception of the Magna Carta,<sup>112</sup> which spelled out fundamental human values.

Even though the courts have become weakened, the battle to keep the Bill of Rights remains. For those of you who do not know its history, it became impossible to install the U.S. Constitution without it. State constitutions existed before the U.S. Constitution, and each incorporates these rights. A long and violent history with harmful monarchs taught many the cost of unbridled plunder and dominance. Without the Bill of Rights to secure freedom, the thirteen states would not ratify the U.S. Constitution. A hard-core fact of life, and a long history to prove it, those with power abuse and even torture their subjects. Nothing has changed to date.

In fact, we could create just about any government, and as long as the Bill of Rights became part of it, and was properly enforced, humans would remain free.

Those who position themselves in the political arena often engage in endless control and domination games. Fear compels them and by counter force, creates the momentum for the rest of us to fight their domination. Within these warring factions, lies the family nucleus. What future do you want for your family? Where do you stand in this battle?

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<sup>110</sup> Wikipedia, the free encyclopedia, Magic Lantern (software):  
[http://en.wikipedia.org/wiki/Magic\\_Lantern\\_\(software\)](http://en.wikipedia.org/wiki/Magic_Lantern_(software))

<sup>111</sup> See Appendix J, Presentation 8

<sup>112</sup> Magna Carta 1215 A.D. Originally written in Latin, it means the Great Charter of Liberty. The nobility of the time listed 63 grievances against King John. Wikipedia has a lengthy historic report. The translation of the document is found at:  
<http://www.magnacartaplus.org/magnacarta/#magna-carta1215en>

The Common-Law Trust is one of the oldest ways to hold a family together, and to gather the support needed to meet the challenges before it. This is why the emphasis is on training, for not only the Trustees, but the entire family. We tell you this from experience.

### **Oaths, Allegiance, Commitment**

American society has practically lost initiation through ritual. Key moments in time where achievement would be impressed, where honor and pride ooze through our body of having gone through the task go unnoticed. For winning a race, we get a reward and maybe a song. We are left with wedding ceremonies and graduations, along with a few rituals in religion. We miss a key component in our society.

We no longer swear oaths as the Quakers did, shown in Appendix A of Volume I. The bonding of those who go through trials together are not properly celebrated. Rushing from one task to another, a reward here and there, we carry on.

In a Common-Law Trust there is no particular ritual, yet there is an oath about privacy. With enough education and the right wording, it becomes a special commitment. Not only will you be fined anywhere from \$10,000 to \$100,000 for its violation, but you can be tossed out of the group. Now, when opposition comes to entice you to give up the names of the Beneficiaries, surrender documents you can simply say, "I have signed an Oath of Privacy. I cannot."

Should they continue to tempt, you can ask them if they want to pay the fine.

Although you may feel initially frightened to sign the document, you will find it to be your best friend. With a long list of what you cannot reveal, you are covered.

### **Trained Agents**

Trained federal agents and other government employees will not stop to consider the damage done to a family by their actions. The Trust may become a target as the more money there is in it, the more attractive it becomes. Specializing in fear tactics, agents may confront anyone surrounding the Trust.

Here is one of the main reasons to keep Beneficiaries private. Usually they do not have details about Trust finances. When faced with an agent, they assume the worst. Suddenly, they believe the Trustees have done something illegal. They know everyone will go to jail. Because of this, it is better they know nothing, not even that agents have inquired.

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On the Internet is a series of articles titled "If an Agent Knocks." Several pages are available for your education about how the FBI performs as well as your proper response. Contrary to the belief that only the FBI performs fact-gathering, the IRS does its share. Allegedly interested in taxes, the IRS inquires into matters threatening the Federal Reserve Bank. This includes books, web sites, magazine articles and other related areas of interest.

U.S. Government officials, including IRS Agents, use intimidation tactics to extract information from unsuspecting people. The Trustees cannot afford to be so naive, and to fall for their methods.

The rule is only the Trustees deal with agency officials. Refer to the Trustees telephone calls from agents, or documents received.

Trained Trustees know the IRS is a foreign organization, based in Puerto Rico, and not part of the U.S. Government.<sup>113</sup> The IRS is, further, a foreign corporation working for the international bankers who own the *corporate* United States of America since June 1933 when President Roosevelt declared the U.S. bankrupt through Executive Orders 6073, 6102, 6111 and 6260.<sup>114</sup> The IRS has no *legal* authority to collect money. A Common-Law Trust is not part of the *corporate* United States of America. Having this information does not stop the battle. It gets the battle drawn out, into a stalemate. This may last three to four years before the IRS finds a way to drop it without any admissions of its status.

Federal agents have no jurisdiction over Common-Law Trusts, other than guns in your face, and your ignorance. People have in the long run won by having the matter dropped or have won in court when they knew how to present effective arguments.<sup>115</sup> Sometimes, properly handling authorities when they first become aware of your Trust or organization, stops any serious confrontations later. Because IRS agents are untrained, and so

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<sup>113</sup> William Cooper, "BATF/IRS Criminal Fraud," CAJI News Service, *Veritas*, Issue No. 6, September 1995.

<sup>114</sup> John B. Nelson, Senate Report No. 93-549, etc. December 26, 1991.

<sup>115</sup> Loresha Wilson, "Local attorney acquitted on federal income tax charges. Cryer stopped filing income taxes more than 10 years ago," *The Shreveport Times*, July 13, 2007; Tom Cryer's federal case number is CR.No. 06-50164-1. Tom Cryer's web site is: <http://www.gcstation.net/liefreezone/>

are many of the supervisors, lengthy paperwork and trips to court may occur. The IRS has a standard protocol: use the courts to wear out resistance.

Tom Cryer has made available the paperwork filed with the court on his case from 2002 through March 2004. The documents listed are fairly standard procedure, and the IRS can carry on this tactic for years. Further, in Volume I we documented the efforts to take down Mr. Betts. Because of the relentless pressure thus demonstrated, people have developed standard responses to IRS accusations. Its machine-like behavior becomes predictable. Effective, though, in destroying the lives of many people, an IRS loss here or there does not stop it.

Should your Trust tangle with the IRS, prepare for a long siege, and keep the Beneficiaries safe.

Without a search warrant, a private Trust does not have to volunteer records to the IRS. There are only some schedules the IRS can question if filed with the 1041.

### **Dealing with Federal Agent Interviews**

18 U.S.C. Section 1001 addresses what happens when you lie to a federal agent. Because of this, many attorneys recommend that their clients call them should any agent question them. We feel differently.

As mentioned before, people not trained in interrogation techniques, which is most of us, are no match for those who have every aim of using words to entrap you and possibly use them against you.

### **Clever and Crafty**

Humans are by nature trustworthy, friendly and helpful. You must learn to be crafty, clever, mean and deceitful. It takes about two minutes with a trained agent to discover you are no match for him or her. The dialogues on the various crime programs are accurate. Beyond that, these agents can lie and get away with it. For you to go after them for their conduct takes oodles of money, time and lawyers—if they are willing to join you in the battle.

### **When to Talk**

If you find yourself face-to-face with a representative of any government agency, you can speak with them without a lawyer if you feel confident what you have to say will have little to no impact.

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For example, a couple of Trustees were interviewed by the FBI about an acquaintance. They knew him distantly, did not conduct any business with him, and did not know much about his life or his contacts. Any attempt to get information about him from them was useless. Not only was there no evidence contrary to that, but their involvement with him had nothing to do with the investigation.

### **Correspondence Testifies**

In another interview the agent had with him a written letter signed by a Trustee. This could have been used to contradict any statements of the Trustee, but in this conversation the Trustee was aware of the written communication. He kept his statements vague. Forced to clarify details, the agent produced the letter. Of course, the Trustee confirmed he wrote it, but it was a couple of years ago and so did not remember many of the facts. Because the contents of the letter were not harmful, its only purpose was to see if the Trustee would lie.

Further, this should underscore that written statements may come back to you. Always be careful about facts. Keep in mind the long-term results and the impact of your words on the lives of others.

In another incident, a woman questioned expressed anger and rage toward the person under investigation. Because of her attitude, the prosecution called her as a witness. Embroiled in the middle of conflicting stories, she had no worthwhile information. Because of her vicious statements against the defendant, though, she had to take time off work to show up to court.

Unless you have something to help with the resolution, or worthwhile information, it is best to say nothing.

### **Lawyers and Innocence**

When interviewed, appear initially polite and wait until enough information is disclosed to discover details about the inquiry. It will be to your advantage if you are friendly, innocent and not let agents know that you might be clever too. It is not necessary to consult with an attorney over a matter handled easily.

In the current political climate, one of every thirty-two adults is in prison, it is best to prepare for a meeting, even if one never happens.<sup>116</sup>

### **Witnesses**

A good way to get experience dealing with agents is to volunteer to be a witness to any conversations with agents. Conversely, should you speak with any agents, be sure another person is with you as your witness. Write up your experience shortly thereafter for your records. You may need it.

### **The Information and Privacy Act<sup>117</sup>**

The Privacy Act of 1974 states the each Federal agency asking for information must tell you:

1. Its legal right to ask for the information and whether the law states you must give up the requested data.
2. What major purpose the agency has to ask for it, and its use.
3. What could happen if the questioning agency does not receive the information.
4. What will the agency do with the information?

The answer to number four is: "We may give your information to . . ."

1. The Department of Justice.
2. Federal agencies, as provided by law. We may also give it to any of the several states.

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<sup>116</sup> James Vicini, "U.S. Has the Most Prisoners in the World," Reuters, December 9, 2006. Common Dreams.org; Adam Liptak, "U.S. prison population dwarfs that of other nations," Americas, International Herald Tribune, April 23, 2008.  
[Http://www.iht.com/articles/2008/04/23/america/23prison.php?page=1](http://www.iht.com/articles/2008/04/23/america/23prison.php?page=1)

<sup>117</sup> The Privacy Act of 1974, 5 U.S.C. § 552a



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3. The District of Columbia, U.S. Commonwealths or possessions to carry out their tax laws.
4. To foreign governments because of tax treaties they have with the United States of America.”

Whether the agent dealing with you reports this fact, depends on his or her instructions, and how much that agent knows about the law.

In other words, there is no privacy. Do you want your records accessible to anyone who inquires? How much is it worth to you to protect those associated with the Trust? To us, it is extremely important to ensure that friends and family are not dragged into tricky and complicated conversations.

## U.S. Constitution and the Bill of Rights

Because of your secured right to contract, you do not need to give agents any Trust information. You need to know, though, what you are doing before you feel confident or brave enough to deal with government officials.

We suggest you be friendly, ask the agents for their identification, and personal addresses. Let them know you will cooperate as required by law. Tell them to write their request. This is to ensure documentation of events and procedures.<sup>118</sup>

It is important to know that *it is not* the responsibility of the General Manager or the Executive Secretary of your Trust to deal with any government agents. Only the Trustees know how to ask a few questions to stop unauthorized and illegal inquiries.

No officer in any Trust has the right to surrender any documents to any agency without a specific court order for any reason. A specific court order must name exactly what is required. With proper training, Trustees will be effective, make a proper judgment of the circumstances, and decide what is the best course of action for the Trust.

Above all else, if agents stop by, do not invite them into your home or office. They are not your friends, and not here for a social chat. With the ability to see items in your home or office, a search warrant for them becomes much easier. The more they do not

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<sup>118</sup>

Further, you need their personal addresses because you may want to pursue them civilly for violations and infractions of the law if you discover the agent has acted beyond their jurisdiction.

know, the better. Meet them in a neutral location, such as on the front porch, side walk, or in a park.

### **Search Warrant**

The Trustees are the only ones with the authority to respond to a warrant. Agents may need to wait until a Trustee shows up to act on the warrant.

If presented with a search warrant, do not panic. Check to see if a judge signed it. Calmly look at the document and study the signature. If there is a signature, be sure you can read it, and ask the agents if this is a judge's signature. You may want to make them wait while you call the court to find out if there is a judge by that name who knew what he signed. Sometimes, though, warrants are unsigned.

It happens that the warrant is defective because the address or name are misspelled. If even one character or number is wrong, it is incomplete. If there are large blank spaces, you cannot accept it because they may write something in after searching your premises.

Using the word "premises" on the warrant, refers to *fixed* property only. Your car is not classified as a "premise."

When you realize the warrant is incomplete, hand it back to the agent and say, "This warrant is defective on its face; it will have to be redone." If the agent asks you what is wrong, reply, "It is not my responsibility to train you in legalities," or some such response. It is probably best if you do not help these organizations seeking to get into your business. Once access is gained, all people associated with the business are questioned. For this reason alone, be sure agencies abide by the law.

### **Warrantless Searches**

Of late, there has been the use of warrantless searches, where "no knock" allows officers to barge into the home. Some of them are being killed.<sup>119</sup> This is why "knocking" was put into law. The powers that be do not want their people so easily killed.

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<sup>119</sup> Vin Suprynowics, "No-Knock Searches Get People Killed,"  
LewRockwell.com

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### **Suspicious Transactions<sup>120</sup>**

What might set off an investigation?

#### **Usual Business Activity**

- ◆ What transactions are NOT suspicious?
- ◆ What transactions look suspicious?

If your usual business involves deposits of \$100 per week and suddenly you make deposits of \$2,000. This may raise issues and questions. This is not normal business practice for you.

#### **Cash Transaction Legislation**

Most western countries around the world have passed Cash Transaction Legislation, and it is almost identical wherever you go. In countries like the United States, United Kingdom, Australia and other countries, anything over \$10,000 per day is reported and any amount the bank staff may consider 'suspicious'. For example, if you walk into the bank with \$8,000 cash to deposit and look nervous or hesitate to answer questions, the "nice teller at window 3" may report you.

Here is a brief list about transactions that will get you reported:

#### **What to Avoid:**

##### Suspicious Cash Transactions trigger when a customer:

- ✓ Comes in with another customer and each goes to different tellers to conduct currency transactions of less than \$10,000.00.
- ✓ Makes large cash deposits containing many \$50 and \$100 dollar bills.
- ✓ Conducts unusual cash transactions through night deposit boxes, especially large sums that are not consistent with the customer's business.

- ✓ Makes frequent deposits or withdrawals of large amounts for no obvious business reason or for a business that does not create large amounts of cash.
- ✓ Conducts several large cash transactions at different branches on the same day.

Suspicious Noncash Deposits also bring attention when:

- ◆ A customer deposits many traveler's checks, often in the same denomination and in sequence.
- ◆ An increase in international wire transfer in an account with no history of such or where the stated business of the customer does not warrant it.
- ◆ A customer receives many small wire transfers and then orders a large outgoing wire transfer to another country.
- ◆ A wire transfer that moves large sums to secrecy havens.

### **The Demise of Bank Secrecy Laws**

Not only are suspicious transactions dangerous, but the entire banking industry falls under scrutiny for any strange pattern.

The biggest events in recent years surround offshore business, bank secrecy laws and International Business Corporations (IBCs). There are two main task forces set up to reduce bank secrecy laws, protection and privacy to make it easier for inquiring governments to get information.

### **The Financial Action Task Force (FATF)**

The FATF is an intergovernmental body developing and promoting policies nationally and internationally to combat money laundering. The FATF recommends to member nations regulations against money laundering and associated crimes. Privacy challenges by the FATF include the government's right to access banking records in offshore jurisdictions. If this occurs, it exposes the banking records of clients in offshore jurisdictions to foreign governments.

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### Organization for Economic Cooperation and Development (OECD)<sup>121</sup>

#### Report of Harmful Tax Competition

Of more concern is the Report of Harmful Tax Competition. It has many so-called tax havens worried. The 34 OECD nations including Australia, United Kingdom the United States all have similar levels of corporate and personal tax tables. The unspoken position is they want all their tax money, and these tax havens do not get to keep the funds. Those behind the OECD use their economic might to pressure these smaller and less powerful countries to give up their "harmful tax practices." This is International bullying of monumental proportions. Many critics and supporters believe it violates countless international laws. What keeps many of these tax haven countries afloat is the tax haven status. These countries resist by telling the OECD they will not comply (probably until they get a better deal).

The OECD targets many countries, but few surrendered in the past two years. The jurisdictions siding with the OECD, to a certain degree, are:

- ★ Cayman Islands
- ★ Mauritius
- ★ Malta
- ★ San Marino
- ★ Bahamas
- ★ Belize

#### **Summary**

Knowledge is the best deterrent to fear. Privacy is the best way to keep Beneficiaries and assets safe.

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<sup>121</sup> The OECD maintains a web site at [www.oecd.org](http://www.oecd.org). You can monitor what countries now cooperate to share banking records. In July 2007, Liberia joined the list.

## Chapter 19: Keys to the Future

**W**e have given you information to build an empire, and at the very least, to pull your family together to create security and a better future. The implications of taking action to reformat your family into a business are vast. Here are the keys to create your own reality and form an interlocking support network. The one magic ingredient you need is the right leader.

We touched on this in Volume I. We wrote about the person who has the ability to bring in the money and to hook up that person to share the wealth for the family. Using those who do not have financial shrewdness, but have other talents, can contribute to having a stronger family.

### **The Leader**

The natural leader has the strength to say, “No,” the courage to go forward despite opposition, and to find new directions. He or she holds a vision of possibilities you may not see, and has the force of will to convince others to join a new endeavor.

Nature created certain signs to let the family know who the leader should be. Unfortunately, the way many handle their children usually thwarts nature’s efforts. As unhappy as it will make younger siblings, it is the firstborn who has the natural leadership abilities.

In some families, because of jealousy, favoritism, and overwhelmed parents, the eldest becomes the “nursemaid.” The initial signature of leadership hardly works at all. And the most damning problem is, often the younger siblings are too wounded and angry to allow the eldest to take the reins.

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### **Potential Stopped**

There is one particular pattern that stands out, and we are sure there are many like this in our society. The firstborn comes into a family where both the mother and the father are nonconfrontational. Hardly able to fight for their rights, both adults choose the easy life. The firstborn has a strong will and dominant personality. Because these parents are unable to handle him or her to give him or her enough discipline and affection, she or he becomes angrier and angrier, rebelling to become disassociated from the family. The later born children are often weaker and one of them becomes the favorite of the parents, to add only to the distress of the older child.

The person who could turn this family into a productive force is no longer qualified, and none of the other siblings has the ability. It is the repressed hovering anger, coupled with a strong will, that most leaders own. Harness and direct the rage, then, a miracle happens—a transformation into a being who knows where he or she must go and what must be done.

Leadership is genetic. The reason the firstborn gets the position, is such a person gets first choice of the genetics and thus, usually is stronger.

Of course, this rule is not set in stone, and often the second or the third child has more of the interest than the first, who may have a different agenda. The point here, though, is to develop family leadership, give the firstborn his or her chance. In our current social jumble, finding the leader may take some strategy, and it may be that no one in your family qualifies, but your brother or sister has a child to hold this key role.

### **More Than One**

This is why we suggest setting up a true Common-Law Trust with several families. From grandparents on down, many members should jump in to build a network of support and wealth to withstand the challenges of the future. The Trustees may hold the financial and legal reins, but there is so much more needed to getting a family together on the same path to be productive and a force of its own.

### **Money, Trade and Exchanges**

The purpose of reducing all financial transactions to numbers is for taxation. Without reporting the numbers, how could we be taxed? Give me three of your sheep? That is how it used to be. Taking care of sheep is much more difficult than counting numbers. Once the numbers happened, everyone became subject to taxation.

### Buttons and Bears

There are certain key ideas about numbers and a money format that are simple and basic. For example, anything can be used as money. We remember the stories when the Europeans came to America and the American Indians were eager to trade furs for buttons. So, remove from your mind that only paper bills are money. The value is in trade. We trade paper for food, and that is just as ridiculous as trading buttons for bearskins.

### Debt Deal

If you take what you believe to be a dollar bill out of your wallet right now and look at it, you will discover it is a Federal Reserve Note. That is a promissory note, and it has no backing. It is debt, not money.<sup>122</sup> That means if this phony “dollar” was devalued, it could become worthless. Conversely, real dollars were silver Certificates, and you could take them to a bank to exchange them for silver coins or bars. The United States became a rich country when the U.S. Dollar, backed by gold and silver in Fort Knox, was the standard for the world. The International Bankers took all the gold and silver in a bizarre twisted financial maneuver reported in several books.<sup>123</sup>

### Media’s Dictation

The media keeps the money moving, and thus convinces you it has value by showing you a constant parade of goodies this Federal Reserve Note buys. The media control what you see and what you hear. This includes television, film, publishing, online holdings, theme parks and other miscellaneous ventures. The names of the big six who control what you think you know are: General Electric, Walt Disney, News Corp., CBS, Viacom, ClearChannel.

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<sup>122</sup> Ellen Hodgkins Brown, J.D., *The Web of Debt: The Shocking Truth About Our Money System—The Sleight of Hand That Has Trapped Us in Debt And How We Can Break Free*, Third Millennium Press, Baton Rouge, Louisiana (2007).

<sup>123</sup> Mortimer J. Alder, *We Hold These Truths*, Macmillan Publishing, New York (1987); W. Cleon Skousen, *A Need For Monetary Reform*, Freeman Institute (1966); Eustace Mullens, *Secrets of the Federal Reserve*, Banker’s Research Institute, Stanton, Alabama (1985)



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Many people are aware of the danger of controlling our thinking. In an article from the Free Press, we find this comment:

Most progressives already know the nation's media are in the hands of the few, the rich, the white, and the male. We know that local control of the airwaves and newspapers is as rare as a "fair and balanced" Fox news report, and as tenuous as Cheney's stuttering heart. We know that to create any lasting and systemic social change – out with the old, in with the bold – we must take back the media that we've lost.

Our "five corporations own all of the world's media" routine is getting a little tired. It's about time we beefed up our knowledge about how our Internet is threatened, how print magazines are bowing like Tony Blair under postal rate hikes, who's slapping the hands of communities reaching for radio stations, and who's kissing whom on the CEO playground (irrelevant maybe, but are we below blackmail?).<sup>124</sup>

### **Virtual Lockdown**

With a powerful grip on information access, we live in virtual lockdown. All of these media giants must ensure the money design remains in place; otherwise, they lose their power. Your evening news deletes anything too upsetting for you to know or waters down the facts. The news parades murders, wars, victims of crime, fires, many disasters, and election battles, while the advertising between news spots convinces you to spend your money, or invest it. Telling you about the complexities of money, though, does not happen. Using the excuse most people cannot understand the details, they keep our programmed expectations solidly in place, thus assuring their own job security.

### **Key to Financial Security**

Where the Common-Law Trust becomes a threat is it holds the key to financial security by supporting different values. The Trust Certificates come backed by the Trust's worth. If the Trust owns a farm, and the economy slips, the Trust Certificates become more significant because of this superior backing. The farm supplies food—no one will starve. With enough land, shelters can be built. This is a true asset. The assets in the

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<sup>124</sup>

Megan Tady, "Who Controls Media Today and How the People Can Take it Back." FreePress, (August 2007):  
<http://towardfreedom.com/home/content/view/1102/1/>

Trust are not limited to the goods; they include the talent for potential creation of wealth. Wealth is not limited to the numbers in the bank; it includes any ability to offer support. With shelter, food and clothing handled, a group of people can build a city, invent new transportation, create new kinds of technology. As mentioned before, people of the Trust are the asset, not the “stuff” in the Trust.

### **Gold Warehouses**

Because of your mental programming, we realize this is a hard notion to grasp, but this is exactly how the current paper money unit started. In the 1700s there were warehouses of gold. People stored their gold and received a “note,” to recover the gold when needed. Gold is heavy and awkward to exchange, while this piece of paper, backed by the gold was much easier to use. Instead of trading the gold, people paid for goods using the receipt from the warehouse. Anyone with this paper could go to the warehouse to claim the gold. Therefore, it became the way of business to use the paper to trade, instead of the gold.<sup>125</sup>

### **Interest-based Loans**

Those who owned the warehouse noticed people did not come back for the gold, so lent with interest 10 notes to one bar of gold. Still people never came back to collect the gold, so these warehouse bankers issued more notes per gold. As you can see, this developed into our profound money scheme with its intricate web of interest based on imagination, and unlimited supply of Federal Reserve Notes printed when convenient. The more they print, the more devalued the money becomes.

### **Certificates**

The Common-Law Trust creates money by agreement, and here lies the danger and the threat to those in power. If enough people come together to create another powerful exchange complex, anything can happen, which is exactly what the powers who control your mind do not want.

It is a short step from a Trust Certificate, returned to the Board of Trustees before assigning or trading it to another, to creating a money format backed by a different value. What hinders you the most from exploring this possibility is you need the current

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<sup>125</sup>

This was a revival of a practice by the Knights Templar, circa 1100 to 1300 A.D., in what was the first routine system of international banking operating across Europe and into the Holy Land.

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financial reality, too. You have your own vested interest in keeping your life the way it is, or do you?

### The Franklin Mistake

One of our founding fathers, Benjamin Franklin made an innocent error. Eventually, the truth would have escaped anyway, but Franklin probably brought about the demise of America's financial system sooner. According to a radio broadcast in 1941, we discover this startling information:<sup>126</sup>

The following historical story is taken from a radio address given by Congressman Charles G. Binderup of Nebraska, some 50 years ago and was reprinted in *Unrobing the Ghosts of Wall Street*:

### Colonies More Prosperous Than The Home Country

Before the American War for Independence in 1776, the colonized part of what is today the United States of America was a possession of England. It was called New England, and was made up of 13 colonies, which became the first 13 states of the great Republic. Around 1750, this New England was very prosperous. Benjamin Franklin was able to write:

There was abundance in the Colonies, and peace was reigning on every border. It was difficult, and even impossible, to find a happier and more prosperous nation on all the surface of the globe. Comfort was prevailing in every home. The people, in general, kept the highest moral standards, and education was widely spread.

When Benjamin Franklin went over to England to represent the interests of the Colonies, he saw a completely different situation: the working population of this country was gnawed by hunger and poverty. "The streets are covered with beggars and tramps," he wrote. He asked his English friends how England, with all its wealth, could have so much poverty among its working classes.

His friends replied that England was a prey to a terrible condition: it had too many workers! The rich said they were already overburdened with taxes, and could not pay

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<sup>126</sup> Charles G. Binderup, Congressman, "How American Created its Own Money, How Benjamin Franklin Made New England Prosperous©"  
Appearing on the web courtesy of Rector Core 604-435-5787  
<http://reactor-core.org/america-created-money.html>

more to relieve the needs and poverty of this mass of workers. Several rich Englishmen of that time actually believed, along with Malthus, that wars and plagues were necessary to rid the country from manpower surpluses.

Franklin's friends then asked him how the American Colonies managed to collect enough money to support their poor houses, and how they could overcome this plague of pauperism.

Franklin replied:

We have no poor houses in the Colonies; and if we had some, there would be nobody to put in them, since there is, in the Colonies, not a single unemployed person, neither beggars nor tramps."

### **Thanks To Free Money Issued By The Nation**

His friends could not believe their ears, and even less understand this fact, since when the English poor houses and jails became too cluttered, England shipped these poor wretches and down-and-outs, like cattle, and discharged, on the quays of the Colonies, those who had survived the poverty, dirtiness and privations of the journey. At that time, England threw into jail those who could not pay their debts. They therefore asked Franklin how he could explain the remarkable prosperity of the New England Colonies. Franklin replied:

That is simple. In the Colonies, we issue our own paper money. It is called 'Colonial Scrip.' We issue it in proper proportion to make the goods and pass easily from the producers to the consumers. **In this manner, creating ourselves our own paper money, we control its purchasing power and we have no interest to pay to no one.**

According to this transcript, the English Bankers took steps to get the British Parliament to pass laws forbidding the use of scrip money.

From this we learn creating money is easy, managing it an art form, and that those who wish to control every part of our lives will stop at nothing to ensure their dominance.

Herein lies the real secret, and why the International Banking are so intensely dedicated to ensuring we never know that money is created by agreement, and we can change our mind anytime.

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We found another point of view about this issue of colonial scrip:

The Bank of England has played a prominent role in American history—without it, the United States would not exist. The American colonists considered themselves loyal Englishmen to a man, but when they began to enjoy unequaled prosperity by printing and circulating their own Colonial scrip, the stockholders of the Bank of England went to George III and informed him that their monopoly of interest-bearing notes in the colonies was at stake. He banned the scrip, with the result that there was an immediate depression in the commercial life of the Americas. This was the cause of the Rebellion; as Benjamin Franklin pointed out, the little tax on tea, amounting to about a dollar a year per American family, could have been borne, but the colonists could not survive the banning of their own money.<sup>127</sup>

### Legalities

Another cause keeping the current financial powers in place is the legal organization. With its powerful vested interest, it neglects morals, ethics and the law to keep its status. Rewarded for cleverness, instead of morality, these victors in that system laugh all the way to the bank. So far, with the sampling we have done, every lawyer we have charged with selling out, has never disagreed.

### Adversary System

Our law procedure, known as the “adversary system,” puts truth secondary to winning. This reality is so rampant that a book, published on the Internet, details the scramble of legal priorities. Here is an excerpt:

First, what are lawyers? Harvard ethics professor Arthur Applebaum said in 1995: “Lawyers might accurately be described as serial liars because they repeatedly try to induce others to believe in the truth of propositions, or in the validity of arguments, that they believe to be false.” I assume he meant the 40 percent who are trial lawyers.

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<sup>127</sup> Eustace Mullins, *The World Order, A Study in the Hegemony of Parasitism*, Ezra Pound Institute of Civilization, Staunton, Virginia (1985), p. 20.

Second, what is justice? A former Australian Federal Court judge, Russell Fox QC, says in *Justice in the 21<sup>st</sup> Century* (Cavendish, 2000) that justice means fairness, fairness requires truth, truth means reality, and the search for truth give a system a moral face, otherwise the likely winner will merely be the one with the most resources.

So everything turns on truth. The adversary system does not search for the truth, and trial lawyers control the evidence, hence the process, and hence the money. Judges control the courtroom, but are untrained, ignorant of the facts and passive<sup>128</sup>. The investigative system is the opposite: it searches for the truth, and trained judges control the process.<sup>129</sup>

### **Trust Leverage**

The Common-Law Trust has within it the potential to take care of its own disputes, many times without using the courts. Further, the Trustees and Protector may have more power than the courts if the Beneficial distribution can be slowed or ended when the Beneficiary becomes too difficult. Where the courts hold power is levying a bank account or locking people away. If more people take charge of their own conduct, using their Trusts to manage themselves, the courts are not so needed. Given our current reality, we doubt the legal complex is threatened by this notion. Not until enough people step forward to change their own lives, and their families' will there be any impact on the courts. If this idea took hold, it would be a couple of generations before any legalities were affected.

### **Freedom**

For our purposes we define freedom as, "The right to decide your own destiny and make decisions about your life." We now examine what this means.

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<sup>128</sup> See Appendix J, Introduction where the judge is the referee in a court game.

<sup>129</sup> Evan Whitton, *Serial Liars, How Lawyers Get the Money and the Criminals Off*, Lulu (2005): [http://www.abetterlegalsystem.info/pdf/Serial-Liars\\_Ebook.pdf](http://www.abetterlegalsystem.info/pdf/Serial-Liars_Ebook.pdf).

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In most safari expeditions in the animal preserve Shambala<sup>130</sup> in Acton, California, the guide tells you that a particular tiger or lion in the wild has a life span of about three to four years. A hard life, destined to an early doom. Wild animals living in zoos, or at Shambala, have a life expectancy between 20 and 25 years. It makes us ponder. What is freedom?

To continue this discussion, we define evil as “unbridled freedom.”

### **Destiny**

Somewhere in the middle of good and evil, freedom exists, but must be constrained to be productive, and is this freedom? Do you really control your own destiny? Your decisions impact others, and how much of your freedom do you choose to give up to ensure food on the table and comfort?

Because of the heavy responsibility to support a family, there are some corporations that only allow those married with children in management positions. Once obligated, these parents are likely to toe the line. Betting that marriage and parenthood enslave, the corporation gets the longevity and loyalty necessary. It is not likely one with a commitment to a family will be job-hopping.

Perhaps we can say that freedom is the right to choose your enslavement? Some of those bonds enlist you for many years, and some are nearly impossible to reverse.

### **The Double-edged Sword of Contracts**

We have discussed that Article I, Section 10, Clause 1 of the U. S. Constitution secures our right to contract. Although this gives you the right to create a Common-Law Trust, it does not make any guarantees that your contract will turn out the way you planned.

The other half of the story about the obligation of contracts is that you have a right to make binding agreements, and this includes the right to make foolish ones. You can also make contracts to restrict your freedom. Further, as we mentioned in Volume I, through quantum meruit and other quasi contracts, you can unknowingly enter a contract where

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<sup>130</sup>

Tippi Hedren, The Roar Foundation, Acton, California, PO Box 189, Acton, CA 93510; <http://www.shambala.org/>

you accept benefits and then later discover what you owe. We pointed out to you that once a person accepts welfare, he or she gives up Fourth Amendment rights.<sup>131</sup>

In an article in *Anti-Shyster Magazine*, Alfred Adask mentioned that “impairing the obligation of contracts” . . . empowers the government to seduce us into Trusts contrary to our interests . . .<sup>132</sup>

### **Schools Undermine Freedom**

Further, freedom needs an educated population, but those in power are clearly against this idea. We know the schools are under siege. Funds granted to them never arrive or are less than promised. Further, there is a systematic scheme to create “compartmentalized learning” to dumb our children down. This technique has been in place since World War I, when Germany figured out how to make sure people could not think for themselves. Imposing this diabolical scheme prevented rioting. The details are in a book written by John Taylor Gatto.<sup>133</sup>

### **Family Government**

We need to decide what freedoms we keep, and what we must surrender to survive. We can best do this by creating a safe space for our family to evolve and grow. What we propose is the family become its own government. By bringing the family together, where care and love become part of the mix, it is possible we could set a foundation to heal this world. Enough people need to join in to make a difference.

### **Corporate History**

Before we segue into creating the paperwork to set up a Trust, let us take a lesson from corporate history. Trusts are for the family, for the members to support each other. Originally, corporations were set up for the interest of the community. We do not want

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<sup>131</sup> Joe Cobb, “Welfare Rights,” Editorial Page, [www.JoeCobb.com](http://www.JoeCobb.com) (July 23, 2007)

<sup>132</sup> Alfred Adask, “Trust Fever,” *AntiShyster News Magazine*, Volume 7, No. 1, pg. 47

<sup>133</sup> John Taylor Gatto, *Dumbing Us Down: The Hidden Curriculum of Compulsory Schooling*, New Society Publishers, Gabriola Island, British Columbia, Canada (1992)



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to lose sight of where we are going with the Trust idea. Here is a brief overview of how corporations took over.

. . . The other part of the story is the development of corporations, which is an interesting story in itself. Adam Smith didn't say much about them, but he did criticize the early stages of them. Jefferson lived long enough to see the beginnings, and he was very strongly opposed to them. But the development of corporations really took place in the early twentieth century and very late in the nineteenth century. Originally, corporations existed as a public service. People would get together to build a bridge and they would be incorporated for that purpose by the state. They built the bridge and that's it. They were supposed to have a public interest function. Well into the 1870s, states were removing corporate charters. They were granted by the state. They didn't have any other authority. They were fictions. They were removing corporate charters because they weren't serving a public function. But then you get into the period of the trusts and various efforts to consolidate power that were beginning to be made in the late nineteenth century. It's interesting to look at the literature. The courts didn't really accept it. There were some hints about it. It wasn't until the early twentieth century that courts and lawyers designed a new socioeconomic system. It was never done by legislation. It was done mostly by courts and lawyers and the power they could exercise over individual states. New Jersey was the first state to offer corporations any right they wanted. Of course, all the capital in the country suddenly started to flow to New Jersey, for obvious reasons. Then the other states had to do the same thing just to defend themselves or be wiped out. It's kind of a small-scale globalization. Then the courts and the corporate lawyers came along and created a whole new body of doctrine which gave corporations authority and power that they never had before. If you look at the background of it, it's the same background that led to fascism and Bolshevism. A lot of it was supported by people called progressives, for these reasons: They said, individual rights are gone. We are in a period of corporatization of power, consolidation of power, centralization. That's supposed to be good if you're a progressive, like a Marxist-Leninist. Out of that same background came three major things: fascism, Bolshevism, and corporate

tyranny. They all grew out of the same more or less Hegelian roots. It's fairly recent. We think of corporations as immutable, but they were designed. It was a conscious design which worked as Adam Smith said: the principal architects of policy consolidate state power and use it for their interests. It was certainly not popular will. It's basically court decisions and lawyers' decisions, which created a form of private tyranny which is now more massive in many ways than even state tyranny was. These are major parts of modern twentieth century history. The classical liberals would be horrified. They didn't even imagine this. But the smaller things that they saw, they were already horrified about. This would have totally scandalized Adam Smith or Jefferson or anyone like that....<sup>134</sup>

As we mentioned in Volume I, leave the major business activity to partnerships or corporations; leave the major “family as a business” to the world of Trusts.

The following Glossary, a mind boggling collection of Trust-related words, is followed by a comprehensive appendix. It gives you the blueprint for survival, change and growth. Use it well.

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<sup>134</sup>

Noam Chomsky . “Education is Ignorance.” Excerpted from Noam Chomsky and David Barsamian, *Class Warfare: Interviews With David Barsamian*, Common Courage Press, April 1996, pp. 19-23, 27-31.

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## Glossary

### Decision Criteria

**C**reated from over twenty Trust collections, this Glossary is designed to be a rich resource for those interested in Trust administration. Gathered from various web sites, law books, and experience, this lexicon has been compiled to assist the uninitiated in Trust protocols and to quickly pick up the jargon of the industry. You may find some of these definitions contrary to common use. Further, we have narrowly defined them to apply only to Trusts or matters associated to relevant legal experiences. We have left out what really belongs in the realm of the tax professional and estate planning lawyer, but we have kept the obscure, the Latin, and that which just plain boggles the mind.

Where confusion existed because more than one definition is given, we included the applicable variations. Because the Glossary is designed as a learning tool, in some cases we expanded the definition to encompass data to enable a better use of the information. Even with this effort, some words seem to make no sense at all. Once embroiled in the situation described, everything becomes clear, we hope. We also hope you never get so tangled up as some of these words.

This Glossary is a stand-alone study, a wonderland of language, giving you a deeper understanding of the vastness of the world where passing the buck is just plain tricky business. It is not necessary to know all these words, just to enjoy them.

It is impossible to include every word—although, in our great enthusiasm, we tried.

### Cautions

- ◆ The definitions have been stripped down to common words used in Trust-related issues and edited for easy understanding. Therefore, refer to standard legal resources such as *Black's Law Dictionary* before use in critical documents.

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- ◆ The editors have chosen a certain style of capitalization which may not be applicable to a legal format.
- ◆ Please note that any values referring to taxes may not be current. Check with an accountant for up-to-date information.
- ◆ Because there are too many source references for the Glossary, we have deleted them. We trust that through your own research you will find ample support for these definitions.

# A

**A.K.A.:** Also known as, alias.

**Abatement:** To reduce a gift under a Will because of insufficiency of assets to satisfy all the gifts after paying in full the legal debts of the estate. The general rule is that all gifts of the same class lessen proportionately.

**Absolute Discretionary Trust:** See Henson Trust.

**Absolute Gift:** The transfer of property from a donee without reservations or conditions.

**Abstract of Judgment:** A brief transcript of the essentials of a judgment.

**Abstract Title:** A summary of the conveyances, transfers, and other facts relied on as evidence of title, with all such facts appearing on record as may harm the title.

**Acceleration Clause:** On record as found in a Deed of Trust, loan documents or mortgage to accelerate the time when the indebtedness becomes due.

**Acceptance:** 1) An agreeing, either expressly or by conduct. 2) An act or offer by another party, to conclude a contract to bind both parties. 3) The act of agreeing to an action or offer of another. 4) A term used with negotiable instruments.

**Accommodation:** An obligation assumed without consideration.

**Accounting:** 1) For Statutory Trusts with court-appointed Trustees, a financial statement of all transactions sometimes presented to the probate court involving an estate's assets within a fiduciary's control. 2) The accounting is normally routinely given to Beneficiaries of the estate from the Trustee or Trustees. 3) An accounting can be demanded by the Beneficiaries of not only financial transactions, but of other activities of the Trust, such as the status of legal dealings, Minutes, and pending transactions.

**Accrue:** To accumulate; to come by increase; to come into existence.

**Accumulation Trust:** A Trust that may pay out its income currently or collect it for distribution in a future year.

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**Acknowledge:** To admit or recognize the existence of a binding agreement by signing as evidence of one's intent. This makes it in full force and effect.

**Acknowledgment, Certificate of:** A written statement, affixed to an agreement, signed and sealed by a sanctioned official (usually a Notary). Usually prescribed by law, the Acknowledgment states a person acting in his or her official capacity recognizes the identity of the person who signs the agreement.

**Acknowledgment:** To admit or recognize the existence of a binding agreement by signing as evidence of one's intent. This means it is in full force and effect. See Acknowledgment, Certificate of.

**Action in Quiet Title:** An action to effect the removal of a cloud or clouds on title to property. For example, a judgment against the property or a lien on the title would stop the owner from being able to sell it.

**Action in Rem:** A judgment against property to settle the property's status.

**Active Trust:** A Trust where the Trustees have active duties, such as to preserve and increase the Trust estate, as opposed to a *Passive Trust*, where the Trustees merely hold title.

**Ademption:** Revocation of a legacy implied by the law from acts done by the Grantor in his life, though such acts do not amount to an express revocation of it.

**Adjudication:** The determination by a court of appropriate jurisdiction of the rights and duties of parties to a court action or disposition of property.

**Adjusted Basis:** In income tax law, the taxpayer's basis in an asset, reduced or increased for depreciation or appreciation properly allowable for the asset. For example, equipment is likely to depreciate, while collectibles are likely to appreciate.

**Adjusted Gross Estate:** For federal estate tax purposes, the *gross estate* minus certain allowed deductions.

**Administer:** 1) To give ritually, as administer an oath. 2) To oversee or manage.

**Administration:** The care and management of an estate by an executor, an administrator, a Trustee or a guardian.

**Administrator:** 1) An individual or an institution appointed by a court to settle the estate of a person who died without leaving a valid Will. If the individual appointed is a woman, she is known as an *administratrix*. 2) One who manages or oversees.

## GLOSSARY

**Administrator with Will Annexed:** An individual or Trust institution appointed by a court to settle the estate of a deceased person. The settlement adheres to the terms of the person's Will when no executor is named or when one named fails to qualify. Abbreviated as Administrator c.t.a..

**Adult:** A person considered by law to be competent by his or her attained age. Also called lawful age, legal age and majority. See **Minor**.

**Adversary:** Any individual who has a substantial economic interest in the body or income of the business (Trust), which gives reason to act for his or her own benefit, as opposed to being passive.

**Adverse Possession:** 1) The open and notorious possession and occupation of real property under an obvious false claim or color of right. 2) If a person uses another's land for a long time without being challenged by the owner, the land belongs to the person more attached to the use.

**Adverse Trustee:** 1) One who has a large, beneficial interest in the Trust assets as well as the income or benefits gained from the Trust. 2) A Trustee **not** related to the creator by birth, marriage or in an employer or employee relationship. 3) A Trustee not related by blood to the Grantor, and who has a vested interest in the Trust. This makes him independent of the Grantor's will. 4) The Adverse Trustee must adhere to the Trust Indenture and protect the Beneficiaries, even against the wishes of the Grantor.

**Advocate:** 1) Verb - To speak, plead, or argue in favor of. To support or defend by argument; to recommend publicly. 2) Noun - An individual presenting or arguing another's case; one who gives legal information and pleads the cause of another before a court or tribunal; a counselor. A person admitted to the practice of law who advises clients of their legal rights and argues their cases in court. 3) One that argues for a cause; a supporter or defender; an advocate of civil rights. 4) One that pleads in another's behalf; an intercessor for minors, elderly, disabled, handicapped, abused children and spouses. 5) A lawyer. 6) Also known as Advocator.

**AFDC:** Aid to Families with Dependent Children.

**Affiant:** 1) A person who takes an oath or affirmation. 2) The person to whom an oath or affirmation is given. Sometimes called a deponent. See **Affidavit**.

**Affidavit or Authenticity:** 1) A sworn statement in which the affiant states that he or she has compared a document to which the affidavit is attached with another claimed to be the original and found it to be a true and correct copy of the original. See



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**Certified Copy.** 2) An affidavit in which the affiant states that he or she has examined an object (such as an antique) and has, in his or her ability as an expert, found it to be genuine.

**Affidavit of Birth:** An affidavit in which the affiant states that he or she has personal knowledge of the date and place of birth of another and the source of such knowledge.

**Affidavit of Death of Joint Tenant:** An affidavit in which the surviving joint tenant states another joint tenant is deceased. A certified copy of the death certificate is attached.

**Affinity Relationship by Marriage:** To be distinguished from **Consanguinity**.

**Affirmation:** A solemn statement, equivalent by law to an oath, but without religious significance or reference to a Supreme Being.

**After-Born:** A child born after signing the parent's Will; as distinguished from posthumous child.

**Agent:** In law, a relationship in which one party (the agent) acts on behalf of and under the control of another (the principal) in dealing with third parties. It has its roots in ancient servant-master relations. Agent becomes a legal issue when the agent injures or wrongs a third party. In Anglo-American law, principals are bound by and liable for the acts of such agents as stockbrokers, business agents, contractors, real-estate agents, lawyers, union representatives, managing partners, and private detectives.

**Agency:** A group of people acting as agents dealing with third parties. See **Agent**.

**Agency Account:** 1) Agency accounts hold funds for other organizations. Those that work mainly as payroll clearing accounts or that incur significant payroll-related responsibilities must hold a sufficient amount of cash to cover responsibilities. Agency accounts are expected to keep positive balances. Where negative agency accounts occur, the shortfall must be funded before the next accounting period.

**Agency Coupled with an Interest:** An agency in which the agent has a legal interest in the subject matter of the agency. The death of the principal does not end the agency. It continues until the agent realizes his or her legal interest.

**Agenda:** 1) Points to be discussed during a meeting. 2) A written list of topics compiled for discussion.

## GLOSSARY

**Agent:** 1) A person authorized to act for another person. The distinguishing characteristics of an agent are 2) Her or she acts on behalf and subject to the control of the principal. 3) He or she does not have the title to the property of the principal. 4) He or she owes the duty of obedience to the principal's orders.

**Aggregate:** 1) The entire amount. 2) Considered collectively as a whole.

**Agreement:** An understanding, often put in writing and signed, by two or more people.

**Alias:** Also known as; a.k.a.

**Alienate:** To transfer or convey a title or other right property to another.

**Alienation:** The transfer of title to property by legal conveyance. See **Restraint on Alienation of Property**.

**Allocation:** 1) To credit a receipt in its entirety. 2) To apply a payment to either the principal account or the income account; to be distinguished from apportionment.

**Allodial:** Free from the tenurial rights of a feudal overlord or government.

**Allodium:** Land held absolutely in one's own right. Land not subject to feudal duties and burdens. No duty is due.

**Allowance:** 1) The sum or sums awarded to a fiduciary by a court as compensation for his or her services; to be distinguished from charge, commission, and fee. 2) See **Widow's Allowance**.

**Alteration:** A change or amendment.

**Alternative Valuation Date:** A date other than the date of death from which the executor of an estate may elect to value all the estate's assets under IRC § 2032. The alternate valuation date is the date six months after the date of death. The exception is for assets sold, exchanged, disposed of before then, to which the alternative valuation date is the date of sale, exchange, or disposition.

**Amendment:** A change, correction, addition or alteration.

**Ancestor:** One who precedes another in the line of descent. In Common Law, the term applies only to a person in the direct line of ascent, such as father, grandfather, or other forebear. Broadened by statute, it applies also to a person of collateral relationship, for example, an uncle or aunt from whom property has been gained.

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**Ancillary Subordinate:** Not the most important and subject to the authority or control of another. For example, an ancillary subordinate for a Trust may be chauffeur, nanny or housekeeper.

**Annual Gift Exclusion:** A gift tax exclusion allowing a donor to make yearly gifts of \$12,000 per donee. There are no limits to the number of donees. Gifts must be of a present interest. Amounts over the excluded amount are taxable. The exclusion also serves to shield the gifts from the unified estate tax in the donor's total of lifetime and death transfers. The exclusion is unlimited for direct payments of a donee's medical or tuition expenses. See IRC § 2503©.

**Annuitant:** The Beneficiary of an annuity.

**Annuity:** A stated amount payable yearly or at other regular intervals for either a certain or indefinite period, as for a stated number of years or for life.

**Annuity Interest:** A right to a fixed annual payment for life or a term of years, usually to a Trust fund, such as a Charitable Remainder Annuity Trust fund. See also **Private Annuity**.

**Ante:** Before.

**Antenuptial:** Before marriage.

**Appeal:** Action by a defeated party in a lawsuit to have a judgment reversed.

**Appearance:** The coming into court of a party to a suit.

**Appointment:** 1) As applies to Notaries, a document in which a superior officer designates or confers title, powers, responsibility and authority to another. 2) A notarial appointment. See **License**.

**Apportionment:** The division or distribution of a receipt or a payout between or among two or more accounts, as between principal and income; to be distinguished from allocation.

**Appreciation:** Increase in value, as opposed to depreciation.

**Appurtenance:** Something belonging or attached to something else and passing as incident to the principal thing; that is, a right-of-way over land.

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**Arbitration:** The hearing and settling of a controversy by anyone agreed on by the parties or chosen by the court or by someone under statutory authority; to be distinguished from adjudication.

**Arm's Length Transaction:** A transaction negotiated by unrelated parties, each acting in his or her own self-interest; the basis for a fair market value determination. A transaction in good faith in the ordinary course of business by parties with independent interests. Commonly applied in areas of taxation when there are dealings between related corporations. For example, a corporation must sell property to its sole shareholder for an arm's length price. If the price is \$10,000 an "arm's length" is determined by how much the corporation could sell the property to a disinterested third party in a bargained transaction.

**Arm's Length:** When the Trustees of an Irrevocable Private Trust can act independently from the will of the Grantor because of their own vested interest in the Trust, the Grantor becomes arm's length from the Trust. The Trustee and the Grantor are unrelated parties each acting in his or her own best interest. This proves the Trust is set up for the benefit of the Beneficiaries and not for the Grantor.

**Artificial:** Created by art, or by law; existing only by force of or in contemplation of law; not of natural law. Humanly contrived. A Will or contract is 'artificially' drawn if it is expressed in apt and technical phrases and shows a scientific arrangement.

**Assent:** An agreement to something done before because it is obviously to the person's benefit and, thus, assumed accepted. The law supports the person taking the benefit when it is to his or her advantage to do so. It is, further, not supposed he or she is unwilling to do that which is of personal advantage.

**Asset Holding Trust:** See **Pure Trust**

**Assign:** To transfer property, title or ownership.

**Assumpsit Express:** Where one undertakes verbally or in writing, not under seal, or by matter of record, to perform an act, or to pay a sum of money to another.

**Assumpsit:** Expressed or implied. An undertaking, either expressed or implied, to perform a honorable agreement.

**Assumpsit Implied:** Where there is no verbal or written promise to do an act or to pay a sum of money to another, it is presumed from action taken reciprocity occurs. For

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example, if one receives a loaf of bread without objection and eats it, it is assumed the person pays for the bread.

**Assurance:** Synonymous with insurance.

**Attachment:** The act of taking a person's property into legal custody by writ or to pay a person's debt to a creditor.

**Attest:** To bear witness to; to sign as a witness.

**Attestation Clause:** The clause of a document containing the formal declaration of the act of witnessing; in a Will, the clause immediately following the signature of the testator and usually beginning, "Signed, sealed, published, and declared by the said. . ."

**Attesting Witness:** One who testifies to the authenticity of a document; to be distinguished from a subscribing witness.

**Attorn:** To accept and acknowledge a new landlord; to appoint an attorney or substitute.

**Attorney-in-Fact:** A person who, as agent, gets written authorization from another person to transact business for his or her principal out of court.

**Attorney-at-Law:** A person legally qualified and authorized to represent and act for clients in legal proceedings; to be distinguished from an attorney-in-fact or attorney-in-law. Titles, such as advocate, counselor, solicitor, proctor, attorney, counsel, lawyer, legal counsel, and esquire, are also used to identify an attorney-at-law.

**Attorney-in-Law:** A person not legally qualified and authorized to represent and act for clients in legal proceedings, except in a Common-Law court; to be distinguished from an attorney-in-fact or attorney-at-law. This is usually an appointed position in Common Law to a man or woman who has shown skill in an area of law. Titles, such as advocate, counselor, solicitor, protector, attorney, counsel, and esquire, are mostly used.

**Authenticated Copy:** A copy of a document, the likeness of which to the original has been evidenced in the manner required by law by the certification and seal of a named public official.

**Authentication:** The signing by the Trustee of a Trust on a certificate of a bond for identifying the bond as being issued under a certain Indenture thus approving the bond.

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**Authorized Investment:** An investment allowed by the Trust instrument; to be distinguished from a legal investment. See **Legal Investment**.

**Award:** 1) A decision of an arbitrator; to be distinguished from a decree and a judgment. 2) An act of acknowledgment.

## *B*

**Bailment:** The delivery of personal property by one person to another for some specific purpose, such as for use, repairs, or safekeeping, but without passing title to the property. The person delivering the property is known as the bailor; the person receiving it is called the bailee.

**Bank Trust:** A Trust held and governed by a bank, or in the case of a Common-Law Trust, a Management Trust handling the money for other Trusts in a bank account.

**Bargain Sale:** A sale, usually among family members or between an individual and a charity, at less than the full fair market value of the property.

**Basis:** 1) In income taxes, the amount representing the taxpayer's cost of an asset, against which any amount realized on its sale or other disposition is compared to determine the amount of gain, if any, and that may be depreciated if the asset is depreciable. 2) Basis is the amount representing original cost plus cost of improvements, which is used in calculating capital gain.

**Bearer:** The person in possession of a negotiable instrument such as a check, Trust Deed, or bond. Also called the holder.

**Beneficial Interest:** A profit, benefit, advantage, right, title, to cash or property that accrues or may accrue.

**Beneficiary:** 1) A person designated to have and hold the equitable interest in a Trust estate. 2) Holders of the Certificates of Capital Units, who receive disbursements when the Trustees so dictate. 3) The person for whose benefit a Trust is created. 4) The person to whom the amount of an insurance policy or annuity is payable. 5) A person who holds Units of Beneficial Interest to receive only a percentage of Trust profit. 6) Trustees are sometimes referred to as Beneficiaries, as they legally receive the corpus and are under contract to disburse it to others named as Beneficiaries.

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**Benevolent Associations:** Voluntary aggregations of individuals, Trusts, Foundations or bodies corporate, formed not for profit, but to render financial aid or other assistance to their members.

**Bequest:** A testamentary gift of personal property. The term has sometimes been held to include real property also.

**Bid And Offer:** 1) Bill of exchange 2) A written order to pay a specified sum of money. 3) Also called a draft.

**Bill of Rights:** The first ten amendments to the U.S. Constitution dealing with matters of freedom of speech, religion, due process, search and seizure. These are rights retained by the People and create a restriction on the government. The inclusion of The Bill of Rights became necessary to ratify the U.S. Constitution.

**Bona Fide:** "Good faith"; in or with good faith; sincere.

**Bond:** A sum to be posted either in cash or through a bonding company to ensure performance by the legal representative of an estate, whether executor, administrator, or Trustee. The bond may be imposed by provisions of the Will or Trust or by a court of competent jurisdiction. A contract of debt normally issued by an institution, such as a corporation with a fixed interest rate, that has a higher priority. For example, a bond is usually paid before dividends. This term, in some jurisdictions, is also synonymous with mutual investment fund. This type of instrument is sometimes referred to as a bond fund or funds.

**Broker:** One who performs acts for, or does business as an agent or intermediary for another called a principal.

**Business Trust:** A.K.A. Massachusetts Trust, Unit Trust or Business Trust Organization. A Common-Law contract arrangement whereby a legal entity is established similar in form to a corporation but taxed as a Trust. The tax structure depends on how the Trust is set up and how Beneficiaries are treated. In some states, Business Trusts are treated as partnerships, or taxed as corporation. This depends on the laws of the particular jurisdiction in which the instrument is created, and in accordance with the terms and conditions of the agreement and the methods by which it is utilized.

**Buy-Sell Agreement:** A contract or provision in corporate documents or a partnership agreement under which one or more persons or entities (the partnership or the corporation) agree to buy the interests of the other parties to the agreement, at certain times

(usually in lieu of other lifetime sales or transfers and at death), at a stated price and on stated terms.

*C*

**C.C.P.** Code of Civil Procedure.

**Cancel:** To strike out, destroy, or make void.

**Capital Gains:** Gains recognized from a sale or exchange.

**Capital Gains, Long-Term:** Capital gains recognized on the sale or exchange of a capital asset held for more than six months. See IRC § 1221.

**Capital Gains, Short-Term:** Capital gains recognized on the sale or exchange of a capital asset held for fewer than six months. See IRC § 1221.

**Capital:** Synonymous with principal and corpus when referring to assets placed in Trust. This does not include any profits realized from investments. The initial corpus becomes principal when it is invested.

**Caretaker:** A person who cares for real estate in exchange for rent-free living accommodations or other remuneration, and with the possibility of extra compensation. The caretaking profession includes positions as house sitters, ranch sitters, bed and breakfast and inn sitters, property managers, estate managers, and hosts at resorts or campgrounds. This is a contractual position usually with limits, controls or added responsibilities.

**Certificate:** A written statement, signed by an official, describing acts performed in his official capacity. See **Notarial Certificate**.

**Certificate of Authority:** A certificate, signed and sealed by an official or representative who appointed the Notary, attached to a notarized document. It states the Notary's signature and seal are valid, and the Notary qualifies to perform notarial acts. Also called a certificate of official character, certificate of authentication, certificate of prothonotary, and certificate of magistracy.

**Certificate of Trust:** A notarized document stating a Trust does exist and sworn to by the Trustees in front of a Notary. A.K.A. Trust Certification. Certain documents in the Trust are attached as evidence, such as the first and last page of the Trust Indenture.



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**Certificate of Trust Capital Units:** The right to a share of the corpus, if a payout is determined by the Trustee or Trustees. Each certificate identifies the number of units assigned to the Exchanger. Trust Capital Units can also share in the profits of the Trust if the Trustees make a disbursement. See **Trust Capital Units (TCU)** and **Units of Beneficial Interest (UBI)**.

**Certificates:** 1) In reference to Trusts, *Certificates of Trust Capital Units (TCUs)* are given in exchange for property. If the Trust ends, the TCU holders receive their unit share of the Trust corpus. Trust Certificates identify the units exchanged and whether the units given are *Trust Capital Units* or *Units of Beneficial Interest (UBIs)*. TCUs have no value until cashed out. UBIs hold only the right to receive distribution, but not value in reference to the Trust corpus, and are not given in exchange for assets placed in Trust. 2) Certificates are also given in other organizations, such as corporate shares.

**Certified Copy:** A copy of a document and certificate on which is a signed certificate and seal by an official who keeps a copy of the original in his or her files. The certificate states the copy is genuine and a true copy of the document (kept by the official) it claims to represent. Also known as an Attested Copy.

**Certify:** To make a statement.

**Certiorari:** A writ from a superior to an inferior court, directing a certified record of its proceedings in a designated case to be sent up for review.

**Cestui:** He.

**Cestui Que Trust (plural, Cestuis Que Trust):** A person for whose benefit a Trust is created; the same as a Beneficiary.

**Cestui Que Use:** The person for whose use land was granted to another.

**Cestui Que Vie:** The person during whose lifetime an estate has been granted.

**Chancery:** Originally, kings heard cases personally but later delegated this duty to the *chancellor* who served as secretary to the King. The *chancellor's* power grew accordingly. The *Lord High Chancellor* or *Lord Chancellor* is now the highest judicial functionary in England. Accordingly, *chancery* (a contraction of “*chancellery*”) originally meant simply the *Office of a Chancellor*, but its own status evolved into a system of courts as the power and prestige of the *chancellor* increased. Now known as the Court of Equity in the United States, it administers justice and decides controversies

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according to the rules, principles, and precedents of equity—contract law. The issue is judged by how the contract is written.

Chancery follows the forms and procedure of chancery; as distinguished from a court having the jurisdiction, rules, principles, and practice of the Common Law in America. Common-Law and equity courts merged through the Field Code of 1848. The central principle of this code is that “distinctions between actions at law and suits in equity and the forms of all such actions and suits, heretofore existing, are abolished.” It substituted the “one form of action for the enforcement or protection of private rights.”

**Change of Venue:** The removal of a case for trial from one court to another, possibly in a different county or parish, where the environment is more in alignment with the circumstances.

**Charge:** As applied to Trust business, the price fixed or demanded by a Trust institution for a Trust department’s service. It is compensation which a Trust institution has a legal right to set, in contrast to an allowance, which is granted by a court.

**Charitable Bequest:** A gift of personal property to a charity by Will.

**Charitable Devise:** A gift of real property to a charity by Will.

**Charitable Lead (income) Trust:** A Charitable Trust under which the charity receives an annuity interest, a fixed dollar amount, or at least five percent of the annual or initial value of the Trust assets, for a term of years, after which a noncharitable person or group receives the remainder interest.

**Charitable Remainder Annuity Trust:** A Charitable Remainder Trust under which the noncharitable income interest is expressed as a fixed dollar amount or percentage (of at least 5 percent) of the initial value of the Trust assets. It does not allow later additions. See IRC § 664.

**Charitable Remainder Trust:** A Trust under which an individual or group of individuals receives an income or annuity interest for life or a term of years, and a charity receives the remainder interest thereafter. See IRC § 664.

**Charitable Remainder Unitrust:** A Charitable Trust under which the noncharitable income interest is expressed as a percentage (of at least 5 percent) of the annual value of the Trust assets. See IRC § 664.

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**Charitable Trust:** A Trust created for the benefit of a community, usually without a definite Beneficiary; for example, a Trust for educational purposes. The same as a Public Trust; as opposed to a private Trust.

**Charity:** A gift of real or personal property, or both, to be applied, consistently with existing laws. This is for the benefit of an indefinite number of people by bringing them under the influence of education or religion; by relieving their bodies from disease, suffering, or constraint; by helping them to set up themselves in life; or by creating or keeping public buildings or works, thus lessening the burden on government.

**Chattel:** Any property movable or immovable, except a freehold estate in land. See also **Chattel Personal; Chattel Real; Freehold Estate.**

**Chattel Mortgage:** A document used with a mortgage of personal property. See **Mortgage.**

**Chattel Personal:** An article of personal property, as distinguished from an interest in real property.

**Chattel Real:** An interest in land, such as a leasehold, which is less than a freehold estate. See also **Freehold Estate; Tenancy at Sufferance; Tenancy at Will; Tenancy for Years.**

**Chose:** Anything that is personal property.

**Chose in Action:** You own the item and can prove it. A right to personal property not reduced to possession or enjoyment, but that is recoverable in an action at law. While the right itself is the chose in action, the evidence of the right, such as the life insurance policy, is sometimes referred to as if it were the chose in action; to be distinguished from a chose in possession.

**Chose in Possession:** Any article of tangible personal property, in rightful possession, such as a watch, an automobile, or a piece of furniture; to be distinguished from a chose in action.

**Circa:** About; around; concerning.

**Civil Action:** A lawsuit that has for its object to protect the private (not public) rights and compensation for their violation.

**Civil Law:** 1) The body of laws of a state or nation dealing with the rights of private citizens. 2) The law of ancient Rome as embodied in the Justinian code, especially that

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which applied to private citizens. 3) A system of law having its origin in Roman law, as opposed to common law or canon law. 4) Law concerned with noncriminal matters. 5) Body of laws established by a state or nation, as distinguished from natural law.

**Civil Liability:** The obligation and responsibility to protect another person for damages caused by improper performance of duties and acts.

**Claim:** A legal action to get money, property or to enforce a right protected by law against another party. A Statement of Claim presents the ownership facts. The claim can be any communication telling the addressee of allegedly faulty execution resulting in damages, often expressed in the amount of money the party should pay or refund.

**Claim Land:** A legal declaration of desired control over areas of property including bodies of water. The phrase is usually used only with disputed or unresolved land claims. Some land claims types include aboriginal, Antarctic, and postcolonial land.

**Claim Mining:** The right to extract minerals from a tract of public land. In the United States, the practice began with the California gold rush of 1849. Without effective government, the miners in each new mining camp made their own rules, and chose to adopt Mexican mining law then in effect in California. The Mexican law gave the right to mine to the first one to discover the mineral deposit and begin mining it. The claim limit restricted one person or a small group to what they could mine.

**Claim Patent:** These patents are usually in the form of a series of numbered expressions. More precisely, the descriptions are noun phrases, followed by the details of the invention written in a patent or patent application. This description defines, in technical terms, the extent of the protection conferred by a patent or by a patent application. A Claim Patent is of the utmost importance both during prosecution and in litigation.

**Claimant:** 1) Initiator of a legal action, also known as the Plaintiff or the Petitioner. 2) The one who makes a claim

**Claims period:** The period set by law to file claims.

**Client:** 1) In Latin, *cliens*. A *plebeian*, those of middle or lower class, sponsored by a patron benefactor, known as a *patronus*. This is the predecessor to the Italian *padrino* or godfather. The patron protected the client and gave regular gifts; the client dedicated his vote when the patron needed to be elected. 2) One who pays for the advise of counsel, or services of another.

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**Client Capacity:** The degree to which a client is able, both physically and mentally, to take part in his or her own estate planning. Diminished capacity does not suggest incapacity. Levels of capacity are a critical issue in the planning. In Trust setup a client needs to be able to handle issues surrounding life-and-death, such as the extent of life support needed if an irreversible disease, accident or other condition leaves him or her in a vegetative or comatose state.

**Clifford Trust:** A short-term Irrevocable Trust, lasting at least 10 years. The interim proceeds are given to another, usually a child who has no tax liability. When the Trust ends, the principal is returned to the Grantor.

**Closely Held Corporation:** A corporation in which the stock is owned by often three or fewer people, and not subject to public trading.

**Cloud on Title:** A defect in the owner's title to property arising from a written instrument or judgment or from an order of court claiming to create an interest in or lien on the property. This undermines the marketability of the owner's title, though the interest or lien may be shown by evidence to be invalid.

**Code:** 1) A set of specific regulations about one particular subject, as criminal code, penal code, government code, civil code. 2) Rule.

**Codicil:** An amendment or supplement to a Will. It must be performed with all the formalities of the Will itself.

**Collateral Heir:** A potential Beneficiary who would receive a gift in place of a direct heir under stated conditions or as may be dictated by law of a particular jurisdiction.

**Collateral:** Specific property, commonly securities, given by a borrower to a lender as a pledge for paying a loan or other debt.

**Collusion:** A secret agreement between two or more people to defraud another person of his or her rights or to get an unlawful object. Also known as a "con game," most of the time the scheme includes more than one person to defraud another.

**Color:** Legal term meaning "pretense or appearance of" some right.

**Color of Law:** An appearance of legal power to act but which is in violation of law. For example, a police officer who makes an arrest without probable cause may have been acting under the color of law.

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**Color of Title:** That which appears as a title, but is not title in fact, such as a summons issued without authority.

**Commercial Paper:** Money market security issued by large banks and corporations.

**Commission:** 1) A document used to transfer money, such as a check, draft, or bill of exchange. Also called a negotiable instrument. 2) A percentage of the principal, income or of both, which a fiduciary receives as compensation for his or her services; to be distinguished from allowance, charge, and fee.

**Common Law:** 1) The legal system prevailing in the English-speaking countries; that is, the United States and the countries comprising the British Empire and Commonwealth of Nations. Originating in England, its form developed differently from Roman civil law. 2) The part of law developed over time through court decisions and court opinions, rather than by enactment of statutes or other legislative processes, including those laws inherited from English old-time law. 3) Common-Law derived from natural law. 4) The Common Law changes on a day-to-day basis, depending on the last Common-Law court ruling. 5) Common-Law applies only to actions done, not to the prevention of actions.

**Common-Law Trust:** 1) An express, active, inter vivos Irrevocable Trust. It can be simple or complex. 2) The Trustees hold full fee simple title to the Trust assets in joint tenancy. 3) The Beneficiaries are the holders of Trust Certificates stating the number of units. The type of certificate is determined by the Grantor. 4) A contract that works in the form of a Trust. 5) A Trust created under the Constitutional right to contract.

**Common Trust Fund:** A fund kept by a bank or a Trust company only for the collective investment and reinvestment of money contributed to the fund by the bank or Trust company as Trustee, executor, administrator, or guardian. The fund must conform with the rules and laws of the Board of Governors of the Federal Reserve Bank regarding the collective investment of Trust funds by national banks as well as with the statutes and controls (if any) of the several states.

**Community Property:** Property in which a husband and wife each have an undivided one-half interest because of their marital status. This is recognized in all civil law countries and in certain states of the southwest and Pacific coast areas of the United States, including Washington, California, Nevada, Arizona, New Mexico, Texas, Louisiana and Idaho. Property acquired by gift or inheritance is generally excluded, as well as property acquired before the marriage. The federal estate tax and gift tax both

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recognize community property ownership. Either party can transfer the property to the other to end joint or community property.

**Community Trust:** A Trust, usually composed of gifts made by many people to a community for educational, charitable, or other humane purposes. The property of the Trust and distribution of the funds is under the control of a selected group of citizens acting as a distribution committee. There may be one Trustee, or, as is more often the case, several Trustees. Some Community Trusts are known as foundations. See also **Foundation**.

**Compensation:** As applied to Trust business, this general term covers four specific terms: allowance, charge, commission, and fee. See each of these terms for definitions.

**Competent:** Legally qualified; qualified, or having satisfactory mental capacity and understanding.

**Complex Trust:** This Trust may pay out both the principal and the Trust earnings. The opposite of a *Simple Trust* which needs a specific amount to be paid out to Beneficiaries each year. The Complex Trust allows the Trustees to decide what, if, and how much is paid out or held by the Trust. The Trustees may decide to disburse the income or only part of the income.

**Condemnation:** Is applicable to property law. The exercise of eminent domain; that is, to take private property for public use. The owner receives compensation.

**Conditional Gift:** A gift of property by Will subject to some condition named in the Will or in the Trust instrument. Not an absolute gift.

**Conditional Sale Contract:** A contract for the sale of goods wherein the title or ownership does not pass until fulfillment of the terms in the contract.

**Condominium:** A multiunit building in which each unit is owned separately in fee simple by the occupant, while outside areas common to all units are owned by all the unit owners as tenants in common. Rules of condominium governing boards must be dictated by statutes.

**Conflicting Interest:** An interest in a transaction in which the same person has opposing opinions or interests.

**Conform:** To make the same, to make a similar copy that is not represented to be the original.



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**Consanguinity:** Blood relationship; to be distinguished from affinity.

**Conservator:** 1) An individual or a Trust institution appointed by a court to care for property. Often, an individual or a Trust institution appointed by a court to care for and manage the property of a person of advanced age or who, for other cause, is unable to care for his or her property. This can also be a person acting in much the same way as the way a guardian cares for and manages the property of a ward. 2) A protector and guardian whose business it is to enforce certain statutes and legal agreements. 3) Not a Trustee, but one appointed from the outside to arbitrate an estate.

**Consideration:** 1) The benefit gained from the contract. 2) Compensation or exchange must be included to validate contract. 3) Something offered, something accepted.

**Constructive Notice:** 1) A legal fiction used both in Common Law and civil law where a person or entity is presumed to have knowledge of something, even if they have no knowledge of it. An example is real estate recording. Making documents public is constructive notice by stating the status of the item and the owner. 2) Constructive notice happens when registering a trademark with the federal government of the United States. This is nationwide constructive notice of the trademark ownership. Therefore, if another entity uses the mark, the other user will be treated as though it knew such use was an infringement, even if it had no knowledge of the registration, or the registrant's use of the mark.

**Constructive Trust:** A Trust imposed by a court of equity as a means of doing justice. The Trust is without regard to the purpose of the parties, and there is no need for a Trust document or Declaration of Trust. It is most often used where a person holds title to property and has not transferred it according to agreement or responsibility. A court can order the transfer of the property. Sometimes this Trust is used when property is in dispute, or there has been a fraudulent conveyance, and the property needs to be returned to the original owner. A Constructive Trust is distinguished from an Express Trust and a Resulting Trust.

**Contest of Will:** An attempt by legal process to prevent the probate of a Will or property distribution according to the Will.

**Contiguous:** In actual or close contact; touching; adjacent; near.

**Contingent Beneficiary:** A Beneficiary whose interest is conditional on the happening of a future event.

**Contingent:** Dependent on a certain future event.



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**Contingent Interest:** A future interest in real or personal property dependent on fulfilling a stated condition; thus, the interest may never come into existence at some future time. To be distinguished from a vested remainder.

**Contingent Trust:** A Trust that begins to perform on the happening of a specified event. Also called a Standby Trust.

**Contract:** An agreement in which a party undertakes to do or not do a particular action. Elements of a written contract are: 1) Parties competent to contract, whose names appear in the writing. 2) The subject matter of the contract, or a clear statement of what is to be done or not done. 3) Lawful and valid consideration; and, if made of mutual promises, then a clear and explicit statement of what each party promises to do or not to do. 4) Assent of the parties, shown by signing the contract.

**Controlled Foreign Corporation (CFC):** A legal entity existing in one jurisdiction but is owned or controlled mainly by taxpayers of a different jurisdiction.

**Conversion:** 1) The unlawful appropriation of another's property. 2) The changing of real property to personal property or vice versa. 3) The exchange of one type of security or currency for another. 4) In equity, the change of property from one form to another, from real property to personal property, which is considered to have taken place even though no exchange occurred. Conversion in this sense is known as equitable conversion.

**Conveyance:** The instrument by which an act of property transfer is performed, usually in writing. Also known as a bill of sale or a deed.

**Conviction:** 1) Transfer of title or ownership. 2) The judicial act of finding a person guilty. 3) A deep belief.

**Copyright:** The exclusive right to copy. The owner of a copyright has the right to exclude any other person from reproducing, preparing derivative works, distributing, performing, displaying, or using the work covered in the copyright time period. Copyrighted work can be a literary, musical, dramatic, pantomime, choreographing, pictorial, graphic, sculptural, motion picture, audiovisual, sound recording, architectural work or mask works. Also included are semiconductor chip products and computer programs.

**Corporate Depositary:** An institution serving as the depositary of funds or other property. See also **Depositary**.

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**Corporate Fiduciary:** A Trust institution serving in a Trustee capacity, such as executor, administrator, Trustee, or guardian.

**Corporate Trust:** A Trust created by a corporation, typically a Trust to secure a bond issue.

**Corporate Trustee:** A corporation serving as Trustee. This can also apply to any institution serving as a Trustee.

**Corporation:** An artificial being created by law and granted with certain rights, privileges, and duties of natural people. Also known as a person.

**Corporation Sole:** A corporation consisting of a single person, and his or her successor, incorporated by law to give such person certain advantages, particularly that of perpetuity, which otherwise he or she could not have had. Most corporation soles are of a religious nature.

**Corpus Juris Secundum:** Literally, “second body of laws,” following the Corpus Juris of Roman law. This borrowing underscores the tendency of the current legal system to look back to Rome for its guiding principles.

**Corpus:** The body and capital assets. The property in the Trust. The Trust principal. The principal or capital of an estate as distinguished from the income. It forms the baseline of the Trust’s value.

**Countersignature:** The signature of a person with an official title necessary to authenticate or certify a document.

**County:** An area within a state whose boundaries are determined by political and population considerations. See **Borough, Parish**.

**County Clerk:** A public officer who keeps records and accounts.

**County Recorder:** Refers to the government official and associated office tasked with maintaining records of real estate, as well as other deeds, to provide third parties with specifics about the property owned, as well as validating ownership. The county recorder is known by various names in different states.

**County Registrar:** See **County Recorder**.

**Court Trust:** A Trust coming under the immediate supervision of the court, such as a Trust by order of court or, in some states, a Trust under Will.

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**Covenant:** Promise or contract, whether it is in writing or by parol. In a more technical sense, a covenant is an agreement between two or more people, written and under seal, whereby either party stipulates for the truth of certain facts, or promises to perform or give something to the other, or to abstain from performing certain acts. A Trust Indenture is a covenant.

**Cover:** 1) To guard from attack. 2) To be within an area of protection. 3) To hold within range of an aimed firearm. 4) To afford protection or security as to insure. 4) To provide for funds for damages by keeping a reserve or deposit. 5) To protect by contrivance or expedient.

**Coverture:** In Common-Law, the estate of a married woman.

**Credible:** 1) Believable. 2) Referring to an honest person of good character and reputation.

**Credit Bypass Trust:** A Trust whereby decedent spouse leaves the maximum of equivalent estate tax exemption irrevocably in a life estate to the surviving spouse.

**Credit Shelter Trusts:** Designed to be sheltered from estate taxes by the decedent's unified credit against estate and gift taxes. This tax credit shields one-million dollars. One goal of the credit shelter trust is to avoid qualification for the estate tax marital deduction. Benefits to the surviving spouse from the Credit Shelter Trust are often desirable. The key is to provide the surviving spouse with limited-access. The surviving spouse can be given the right to all income and principal as necessary for support, health, and education. If the rights to principal are limited to such an ascertainable standard, the surviving spouse is able to serve as sole Trustee of the Credit Shelter Trust. The surviving spouse should not be allowed to invade Trust funds to satisfy a legal support obligation. The terminology of the Trust should be carefully drafted, and the surviving spouse should not exceed the ascertainable limited powers of invasion. If this a concern, a Cotrustee could be appointed to decide distributions of principal to the surviving spouse. Check with an accountant for current information.

**Creditor:** One who lends money.

**Cross-Owned:** Usually life insurance policies on the lives of a husband and wife, in which each spouse owns the policy on the life of the other spouse.

**Cross-Purchase Agreement:** A buy-sell agreement under which the other partners or stockholders agree to buy the interest of a deceased or transferring partner or stockholder. To be distinguished from a stock redemption agreement.

## GLOSSARY

**Crummey Trust:** An unfunded Trust that acts as the owner of a life insurance policy. The Trust receives periodically a donor's cash payments, from which the beneficiary of the Trust has a named period to make a cash withdrawal. If this is not done, the cash paid by the donor is used to pay the premiums for the life insurance policy. Under this circumstance the IRS views that a gift of present value interest by the donor has been made. This aspect of the Trust must be so stated. This gift in Trust enables the donor to contribute up to \$12,000.00 per year or \$24,000/00 if two donors such as husband and wife contribute, in premium payments and enjoy the gift tax exclusion. When the donor dies, the life insurance policy in Trust is removed from the donor's estate.

**Curator:** An individual or a Trust institution appointed by a court to care for the property or person or both of a minor or an incompetent. In some states a curator is essentially the same as a temporary administrator or a temporary guardian.

**Curtesy:** 1) The right of the husband to inherit from the wife on her death if they had lawful issue born alive. 2) The interest or life estate of a widower in the real property of his wife who died without leaving a valid Will or from whose Will he has dissented. See **Dissent**. 3) At Common-Law, curtesy took effect for children born of the marriage. They became eligible to inherit the property. 4) In many states, Common-Law curtesy has been abolished by statute or has never been recognized. See **Dower**.

**Custodial Account:** A personal checking or other type of account for those entrusted with the care taking of the Trust. It is used to protect and preserve the property and to perform ministerial acts as directed by the principal. The custodian has no investment or management responsibilities. To be distinguished from a managing agency and a safekeeping account.

**Custodial Care:** Care in a nonmedical facility providing room, board, limited supervision, and limited nursing services usually restricted to giving medications. Residents do not qualify for Medicare or Medicaid refund. These facilities can provide safe and comfortable daily care such as aid with dressing and bathing, maintenance of a special diet. They have no official name but are commonly referred to as personal care boarding homes, rest homes, and old age homes. Most are subject to state licensing controls.

**Custodian:** In some jurisdictions, a guardian or conservator may be known as a custodian. See **Guardian or Conservator**

**Custody Account:** A checking account where funds are used to maintain duties of the custodian to safe keep and preserve the property and to perform ministerial acts for the property as directed by the principal. The agent has no investment or management

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responsibilities. To be distinguished from a managing agency account and a safekeeping account. See **Custodial Account**.

## D

**De Facto:** "In fact."

**De Jure:** "By right."

**Death Taxes:** Taxes imposed on property or on the transfer of property at the owner's death. 2) A general term covering estate taxes and other succession or transfer taxes. Not applicable to Irrevocable Trusts.

**Debenture:** A debt not secured by a lien on property. The term usually means an unsecured corporate note.

**Debtor:** One who owes money, usually to a creditor

**Decedent:** The person who has died. A deceased person.

**Declarant:** One who makes a declaration.

**Declaration:** A formal statement, usually prepared in advance.

**Declaration of Trust:** 1) An agreement outlining the duties and obligations of the Trustees to serve the Beneficiaries according to the wishes of the Grantor. 2) A contract in Trust form. 3) An acknowledgment that the one holding or taking title to property has authority from the one giving the property, and the property is being administered in Trust for the Beneficiaries. 4) A Trust Indenture. 5) The acknowledgment in which the Grantor and the Trustees declare the Trust to exist, take title to property for holding, and sign an agreement. 6) Creates a fiduciary relationship of assets.

**Declaration Under Penalty of Perjury:** A signed statement, which, if false, can result in punishment for perjury.

**Decree:** The decision of a court of equity, admiralty, or probate; to be distinguished from the judgment of a court of law.

## GLOSSARY

**Deduction:** For tax purposes, an amount subtracted from income before computing tax due.

**Deed:** Written document by which the ownership of land is transferred from one person to another.

**Deed of Conveyance:** 1) A written instrument creating a transaction in which any interest in land is alienated, mortgaged, assigned or "otherwise affected in law or in equity." 2) A document to show the legal right to hold.

**Deed of Trust:** A notarized instrument in writing, carried out and delivered, conveying or transferring property to a Trustee, usually, but not necessarily, covering real property. Used in many states in lieu of a Grant Deed.

**Default:** Failure to act, perform, or pay a debt as previously promised or agreed.

**Defeasible:** Capable of being annulled or rendered void; as in a defeasible title to property.

**Defective Trust:** A Trust taxed as a Grantor Trust, usually because of a power inserted specifically to achieve this result, as with some life insurance Trusts.

**Defendant:** The party against whom a lawsuit is directed; as opposed to plaintiff.

**Deficiency Judgment:** A judgment for the balance of a debt after exhausting the security.

**Defraud:** To trick unlawfully or deceive.

**Defunct:** Dead, of no use.

**Demand:** 1) To claim or require. 2) To demand payment. 3) A strong request.

**Demand Loan:** A loan on which the lender can demand repayment at any time.

**Domicile:** Established in a given domicile; belonging to a given state or jurisdiction by right of domicile.

**Demise:** An Anglo-French legal term (from French *démétte*, from Latin *dimittere*, to send away) for a transfer of an estate, especially by lease. The word has a working effect in a lease implying an agreement "for quiet enjoyment." Usually where this word is used is for a beneficiary or a Settlor of a Trust for a set sum per year, say \$1.00, until the beneficiary or a Settlor dies.

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**Demonstrative Gift:** A gift by Will of a specified sum of money, paid from a named fund or asset.

**Deponent:** 1) A witness 2) An affiant.

**Depose:** To give testimony under oath or affirmation about an affidavit or deposition.

**Depository:** One who receives a deposit of money, securities, instruments, or other property.

**Deposition:** The written testimony of a witness under oath, before a qualified officer, to be used in place of the oral testimony of the witness at a trial.

**Depository:** A place where something is deposited.

**Depreciation:** Decrease in value; opposed to appreciation.

**Depreciation Deduction:** An income tax deduction for the wear, tear, and obsolescence of business and investment assets having a useful life. See IRC §§ 167, 168.

**Descendent:** One who is descended in a direct line from another, however remotely. See **Issue**.

**Descent:** Passing property by inheritance.

**Developmental Disability:** An illness or condition interfering with normal mental or physical development. The most prevalent developmental disabilities are mental retardation, learning disorders, cerebral palsy, deafness, and autism.

**Devise:** A gift of real property by Will. A person who receives such a gift is a *devisee*.

**Devisee:** A person to whom real property is given through a Will.

**Devolution:** Passing property by inheritance; a general term including both descent of real property and distribution of personal property.

**Dictum:** (plural, dicta or dictums) 1) An opinion, voiced by a judge, that has only incidental bearing on the case in question and is therefore not binding. 2) An opinion by a judge on a point not essential to the decision on the main question.

**Direct Heir:** A person in the direct line of the decedent. See also **Collateral Heir; Heir**.

**Disbursement:** Money expended by an executor, guardian, Trustee, etc., for the benefit of the estate, or in connection with its administration. 2) Expenditures made during a civil procedure action, aside from the fees of officers and court costs. 3) Expenditure.

## GLOSSARY

**Disclaimer:** An unqualified refusal by anyone to accept an interest in property when another has tried giving it to that person. This is effective providing the disclaimer is written and timely delivered to an estate legal representative.

**Disclaimer Deed:** Used in community property states to deny a spousal claim to property. Similar to a Quit Claim Deed.

**Discount on Securities:** The percentage by which a security is bought or sold for less than its face or par value; opposed to premium on securities.

**Discretionary Income:** Disposable income after meeting basic needs of life and existing indebtedness.

**Discretionary Trust:** A Trust entitling the Beneficiary only to so much of the income or principal as the Trustee, in his or her uncontrolled discretion, sees fit to give the Beneficiary or apply for his or her use.

**Disposition:** A transfer of property.

**Dispositive Facts:** Information or evidence that brings a conclusion to a legal controversy. The fact the defendant in a personal injury case ran a red light and hit the plaintiff with his or her car settles the question of the defendant's negligence and is, therefore, a dispositive fact.

**Dissent:** The act of disagreeing. See also **Curtesy; Dower**.

**Dissolution:** The ending or breaking up of legal relationship, such as partnerships, corporations, and marriages.

**Distributable estate:** The probate estate less expenses and taxes.

**Distributable Net Income (DNI):** A Trust's deduction for both income and principal distributed during a tax year is limited to its DNI. This is taxable income with certain adjustments.

**Distributee:** A person to whom something is distributed; often applied to the recipient of personal property under intestacy. To be distinguished from heir.

**Distribution in Kind:** To distribute using other than cash. For example, to distribute stock or land, instead of selling the asset and distributing the cash.

**Distribution:** In law, the appointment by a court of the personal property of one who died intestate among those entitled to receive the property, according to the applicable



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state statute about distribution; to be distinguished from disbursement. 2) In common usage, anything distributed, disbursed; portion; share.

**Distributive Share:** What a person receives when an estate is distributed.

**Divest:** To annul or take away a vested right.

**Doctrine of Laches:** See **Laches, Doctrine Of**

**Document:** A paper on which writing or printing appears in a legal form, agreement, or contract. Also called an instrument.

**Doing Business As (D.B.A.):** The fictitious name used under which a person or a business entity conducts business. The D.B.A. may not include the owner's name in the fictitious name.

**Domicile:** The place where a person has his or her permanent home and principal establishment; the place to which, whenever the person is absent, he or she intends returning. A person's domicile may or may not be the same as his or her home. It is sometimes used interchangeably with residence. Do not confuse with the word resident as it applies to jurisdictional matters.

**Donee:** The person to whom a gift is made.

**Donor:** A person who makes a gift.

**Dower:** The interest or life estate of a widow in the real property of her husband. At Common Law, a wife had a life estate in one-third of the real property of her husband who died without leaving a valid Will or from whose Will she dissented.

**Draft:** 1) To develop and write a document. 2) A copy of a document to review. 3) A written order to pay a named sum of money. 4) A bill of exchange.

**Dry Trust:** A Trust without assets that awaits funding from a decedent's Will. A Dry Trust can also be funded if the Grantor becomes incompetent. The assets can be transferred into the Trust by someone to whom the Trust Grantor gave a standby power of attorney.

**Duly Qualified:** A person considered capable of performing acts under the law.

**Duplicate:** 1) Noun: A copy of a document made to look like the original. 2) A facsimile. 3) Verb: To make a copy.

## GLOSSARY

**Durable Power of Attorney (DPOA):** Unlike a traditional power of attorney, a durable power does not lapse whenever the Grantor of the power becomes incapacitated or incompetent. The DPOA was first declared in 1969. In 1979, the Uniform Probate Code adopted the language of the Uniform Durable Power of Attorney Act, and all states now allow durable powers. Not all states allow *standby* (or *springing*) durable powers.

**Durable Power of Attorney for Health Care (DPAHC):** This DPOA takes effect when the Grantor becomes incapacitated or incompetent, and gives the authority to the Health Care Agent, previously selected by the Grantor, to make medical decisions. See **Living Will**.

**Duress:** A compulsion or constraint by force or fear of personal violence, prosecution, or imprisonment, which induces a person to do what he or she does not want to do or to avoid from doing something he or she has a legal right to do. Sometimes the word is used about making a Will, as that it was made under duress. This nullifies the Will, although duress is usually difficult to prove and involves a lengthy process.

**Duty:** Obligation to perform an act or acts.

*E*

**Earnest:** Something given as a part of the purchase price to bind a bargain.

**Easement:** A right in the land of another, which entitles the holder of it to some use, privilege, or benefit out of or over said land.

**Ejectment Action:** Recovers possession of land wrongfully occupied by a defendant.

**Elderly:** Under most government and related programs and under most sections of the Internal Revenue Code, an individual's status as elderly is on reaching 65. This is different from reaching an early retirement age, which may be age 62, 60, or even 55. On reaching age 65, "old age" benefits automatically replace Social Security and Supplemental Security Income (SSI) disability benefits.

**Election Against the Will:** The choice provided by many states for a widow or widower to take a named portion of the spouse's estate instead of a bequest contained in the deceased spouse's Will.

**Eleemosynary:** Belonging or devoted to Charity.

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**Emboss:** To make indentations and raised areas on paper, as is done by a seal.

**Eminent Domain:** This is the inherent sovereign power of the state over all the private property within its borders, along with the right to take all or any of the property for a necessary public use. There must be reasonable compensation. This power is termed “the right of eminent domain.”

**Employee's Trust:** A Trust settled by an employer for the benefit of employees.

**Encashment:** Equivalent to surrender value of an instrument, such as an insurance policy, whereby the interest in the contract is given up for cash.

**Encumber:** To mortgage, lien, give easements, or place restrictions on land or otherwise allow others rights or privileges to real estate.

**Endorse:** 1) To express approval. 2) To sign the back or front of a negotiable instrument, such as signing the back of a check.

**Endorsee:** The one the endorser names to receive payment with an endorsement.

**Endorsement:** 1) An expression of approval or recognition given in writing to acknowledge or assure others that a person is qualified to perform certain acts. 2) The endorser's signature or writing, usually on a check or other negotiable instrument.

**Endorser:** The one who signs or writes, usually on the back of a check or other negotiable instrument. This is the same as Indorser

**Enfeoff:** In feudal times, enfeoff was the deed by which a person got land in exchange for a pledge of service. This protocol was later used to avoid limits on the passage of title in land by a system in which a landowner gave land to one person for the use of another. The Common Law of estates in land grew from this practice.

**Entirety:** A tenancy in which the parties are jointly seised of the whole.

**Entity:** One or more people given a title to be recognized as a body to make agreements.

**Equipment Trust:** 1) A Trust set up to hold equipment. The equipment can be leased by third parties. 2) A corporate Trust set up for financing the purchase of equipment. This practice was commonly used by railroad companies when they bought railroad cars and other railroad equipment.

**Equitable Conversion:** A legal doctrine in some states where, under a contract of sale, buyers and sellers treat the sale as though the closing took place. The seller allows the

## GLOSSARY

buyer to take possession of the property before the formal closing. The buyer is obligated to take care of the property at the time of possession.

**Equitable Ownership:** The estate or interest of a person who has a beneficial right in property while the legal ownership is in another person. A Beneficiary of a Trust has an equitable interest in the Trust property.

**Equitable Title:** A right to the benefits of property, recognized by and enforceable in a court of equity; to be distinguished from legal title.

**Equity:** 1) A system of legal principles and rules developed to supplement and correct a system of law that became too narrow and rigid in scope and application. Equity's characteristic is flexibility and its aim is giving justice. 2) That part of the law that enforces discovery, administers Trusts, mortgages, and other fiduciary obligations. 3) Adjusts Common-Law rights where the courts of Common-Law have no procedural mechanisms to do so. 4) Applies specific and preventive remedy for Common-Law wrongs where courts of Common-Law only give subsequent damages. As old rules become too narrow, or are felt to be out of harmony with advancing civilization, a method is needed for gradual enlargement and adaption to new views of society. One mode of accomplishing this on a large scale, without appearing to disregard existing law, is the introduction, by the prerogative of some high functionary, of a more perfect body of rules, discoverable in his judicial conscience, which is to stand side-by-side with the law of the land. This overrides the legal restriction in case of conflict, as on some title of inherent superiority, but not purporting to repeal it. Such a body of rules has been called 'Equity.'

**Equity, courts of:** Courts governing justice according to the system of equity and a particular course of procedure or practice, especially in reference to contracts.

**Equity of Redemption:** The right which the mortgagor of an estate has to redeem property given as security after it has been lost for nonpayment.

**Equity Trust:** Either a Revocable or an Irrevocable Trust holding property for family preservation.

**Erasure:** An obliteration. The removal of written material.

**Erosion:** The gradual eating away. In finances, gradual depletion of value of asset(s).

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**Escheat:** The reversion of property to the state, in the United States, in case there are no devisees, legatees, heirs, or next of kin; originally applicable only to real property, but now applicable to all kinds of property.

**Escrow:** Funds or documents conditionally entrusted to an unbiased third-party with instructions of how funds need to be applied.

**Estate:** 1) The right, title, or interest, which a person has in any property; to be distinguished from the property itself, which is the subject matter of the interest. 2) The property of descent. 3) All property owned by a person at death. This includes both real and personal property.

**Estate Freeze:** Techniques, such as a recapitalization of a corporation or partnership, or a buy-sell agreement used to fix the value of a business interest or other property for estate tax purposes, causing all subsequent appreciation to inure to someone other than the interest's owner.

**Estate Tax:** A tax imposed on a decedent's estate, and not on the distributive shares of the estate or on the right to receive the shares; to be distinguished from an inheritance tax.

**Estoppel:** The legal principle precluding a person from asserting in an action what is contrary to his or her previous action or admission. It bars him or her from denying a misrepresentation of a fact when another person has acted on that misrepresentation to his or her damage. The person so precluded or barred is said to be estopped.

**Et Al:** "And others."

**Evidence:** 1) Something entered into a court proceeding as proof. 2) Any material that substantiates events or corroborates facts.

**Ex post facto:** After the event.

**Execute:** 1) To give validity to a document. 2) To carry out the terms of a contract or Will.

**Executor:** An individual or Trust institution named in a Will and appointed by a court to settle the estate of the Grantor. If a woman is named and appointed, she is known as an *executrix*. Also known as a *legal representative*.

**Executrix:** A woman appointed as a legal representative of an estate by a court.

## GLOSSARY

**Exemplary Damages:** 1) Money awarded in excess of the sum necessary to compensate for the injury inflicted. 2) Punitive or vindictive harm.

**Exemplified Copy:** A copy of a record or document witnessed or sealed or certified needed to bring matters into a legal format for a particular transaction.

**Exemption Equivalent:** The exemption equaling the estate or gift tax sheltered by the unified credit. The exemption equivalent is \$600,000.00. Check with an accountant for current exemption.

**Expiration:** 1) The end of something. 2) Termination. 3) When the time to act is past.

**Express:** Definite, clear, active.

**Express Trust:** A written document expressly established by a Grantor, as opposed to a Trust set up by a Will or implied or created by a court.

## F

**Facsimile:** An exact and precise copy.

**Failure of Issue:** There are no children of the body.

**Fair Market Value (F.M.V.):** 1) is the price at which the property would change hands between a willing buyer and a willing seller, neither having to buy or sell, who both have reasonable knowledge of the necessary facts. 2) The value of the item as determined by the market at the time the recipient receives it. For example, the value of an assets is when a Trust receives it. It becomes corpus at that time. See IRS Publication 17 Part Three Gains and Losses.

**Family Attribution Rules:** Interest in property owned by one person and applied to another for purposes of taxation. See IRC §§ 267, 318.

**Family Corporation:** A corporation in which one or more family members are stockholders, often receiving stock by gifts from other family member stockholders.

**Family Partnership:** A partnership in which one or more partners receive interest by gifts from other partners. See IRC § 704(e)

**Family Trust:** A Living, Revocable, Grantor Trust or Irrevocable Trust used to pass ownership of property without going through Probate Court. If irrevocable, it avoids

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estate taxes, and depending on the amount of funds passed onto Beneficiaries, it may avoid estate taxes. The Revocable Trusts become irrevocable after the Grantor dies.

**Fee:** 1) In Trust terminology, a fixed amount which a Trust institution receives as compensation for its services; to be distinguished from allowance, charge, and commission. 2) Trustees of Irrevocable Trusts receive a percentage of the distribution, known as a fiduciary fee.

**Fee Simple:** Absolute title and authority to use and dispose of property in whatever way one may wish. This is without restrictions to what may be done with it and to whom it passes. Trustees of Common-Law Trusts hold property via this classification, as opposed to Fee Tail.

**Fee Tail:** 1) Ownership passing to issue. An example in common use was a “fee tail male,” or a particular class of heirs. 2) Property passed only to male issue. 3) Restrictions placed on inheritance or transfer of property to another.

**Feofor:** One who enfeoffs or grants an inheritance.

**Fictitious:** 1) Imaginary, 2) nonexistent. 3) Using another name in place of the original name, such as using a fictitious business name, and filing it with the county recorder or the state, whichever is applicable.

**Fiduciary:** An individual or a Trust institution charged with the duty of acting for the benefit of another party about matters coming within the scope of the responsibilities between them.

**Fiduciary Income Tax Return:** The income tax return filed by a person acting as a fiduciary for the estate or Trust.

**Fiefdom:** The area controlled by a feudal lord or organization where a dominant person or group provides leadership or the law format.

**File:** 1) To deliver a document to the proper official for recording. 2) The identification, classification and storage of documents.

**Flower Bond:** An issue of low-yielding United States Treasury bonds bought at a discount and redeemable at face value to pay estate taxes when the owner dies.

**Foreign Corporation:** A corporation organized under the laws of a state other than the state in which it is doing business. Also, a corporation organized under the laws of

## GLOSSARY

another country, although such a corporation is more often referred to as an *alien corporation*.

**Forfeit:** 1) To lose the right to something because of error or wrongdoing. 2) A penalty.

**Forfeiture:** The loss of a right or deposit because of error or wrongdoing.

**Foundation:** 1) An organization, such as a corporation or a Trust, holding assets used for a named purpose, instead of for others. For example, to support marine life instead of named Beneficiaries. 2) The income or assets are for charitable and giving purposes to specific uses.

**Free Act and Deed:** An act done voluntarily.

**Freedom of Information Act (FOIA):** Authorizes the release of information held by federal agencies to the public. The Act requires inquirers to follow a request procedure format to get the information.

**Freehold:** An estate of inheritance, an estate for life, or an estate during the life of a person.

**Freehold Estate:** A legal estate in land, commonly referred to as an *estate of inheritance*. There are three freehold estates: fee simple, fee tail, and life estate.

**Freeholder:** A person who has title to property.

**Funded Insurance Trust:** A Trust funded with assets, which could be an insurance policy or other kinds of investments to pay for the policies.

**Funded Life Insurance Trust:** A Life Insurance Trust holding significant assets other than a life insurance policy to pay some or all of the premium payments.

**Future Interest:** An interest in property, either personal or real, to enjoy only at a future date.



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**General Gift:** A gift by Will of personal property not distinguished from others of the same kind.

**General Power of Attorney:** See **Power of Attorney**

**Generation-Skipping Transfer Tax (GSTT):** Federal tax on transfers in Trust form, or its equivalent, which pass from one generation to successive generations. For example, the children can be skipped in favor of the grandchildren.

**Gift:** A gratuitous, voluntary transfer of property. A gift needs two elements, which are: 1) an intent of the donor to make a gift, and 2) the delivery of the property to the intended donee.

**Gift Causa Mortis:** A gift of personal property made by a person in expectation of death, completed by delivery of the property, and effective only if the donor dies; to be distinguished from a gift inter vivos.

**Gift Leaseback:** A gift of property followed by the donor's leasing the property back.

**Gift Splitting:** A donor makes a gift, and the donor's spouse is elected on a timely gift tax return to be treated as the donor of one half of the gift; this enables the use of the donor's spouse's unified credit and annual gift tax exclusion. See IRC § 2513.

**Gift Tax:** A tax paid by the person making the gift on the transferred property as valued on the date of the transfer.

**Gift Tax Annual Exclusion:** For federal gift tax purposes, the first \$12,000 in present interest given to each recipient during a year is not subjected to gift tax. Like transfers on death, gifts qualify for the \$192,800 unified credit. This equals having the first \$600,000 of taxable gifts without taxation. Check current values with accounting professionals.

**Good Faith:** Honestly and fairly.

**Grant:** 1) The transfer of title or rights to property or the giving of a right or privilege from the Grantor to the grantee. 2) To transfer or hand over.

**Grant Deed:** A document transferring title to property for the Grantor to another. The other person or entity is known as the grantee.

## GLOSSARY

**Grantee:** A person to whom property is transferred by deed or to whom property rights are granted by a Trust instrument or some other document.

**Granting Clause:** Words in a deed of conveyance stating the Grantor's intent to transfer the property.

**Grantor Retained Unitrust (GRUT):** A Trust in which the Grantor keeps the right to receive all income earned by the principal of a Trust. To be qualified under federal law, the amount may be any percentage of the Trust, but not fewer than 5 percent.

**Grantor:** 1) The one who creates a Trust, settles the initial funding to the Trust, selects the Trustees and Beneficiaries. 2) The person who grants and gives over the initial funding to set up the Trust. The Grantor is the same as *Settlor*, *Creator*, and *Trustor*.

**Grantor Trust:** A Trust over which the Grantor keeps such a degree of control the Trust property is considered to belong to the Grantor. The Grantor pays income taxes on the income the Trust earns. See IRC §§ 671-677 and 679.

**Gross Estate:** The sum total of an individual's property for estate tax purposes. Federal estate tax is determined by the value of the gross estate less deductions.

**Gross Negligence:** Failure of care or consideration under reasonable circumstances.

**Ground Rent:** 1) A price paid each year, or for a term of years, for the right to occupy and improve a piece of land. 2) As the term is used in certain states, a rent charge reserved to the Grantor and his or her heirs by the Grantor of land in fee simple out of the land granted.

**Group-Term Life Insurance:** A term life insurance policy covering a group of persons, usually employed by the same employer.

**Guarantee:** The one who accepts the guaranty of the guarantor; that which binds the guarantor to make good on a promised duty or service period.

**Guarantor:** The one who gives a guaranty to the guarantee.

**Guaranty:** An agreement to assume a duty *or* perform a service if previous promises and agreements are not kept.

**Guardian ad litem:** Lat. "guardian at law." 1) The person appointed by the court to look out for the best interests of the child during legal proceedings. 2) A person appointed by a court to represent and defend a minor or an incompetent during court proceedings. 3) Sometimes called a *special guardian*.

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**Guardian:** An individual or a Trust institution appointed by a court to care for the property or the person, or both, of a minor or an incompetent. When the guardian's duties are limited to the property, he or she is known as a *guardian of the property*. When they are limited to personal care decisions, sometimes including medical care decisions, he or she is known as the *guardian of the person*. When they apply to both the property and the person, he or she is known as *guardian*. In some states, the term *committee, conservator, or tutor* is used to designate one who performs essentially the same duties as a guardian.

**Guardian of the Estate:** A guardian of the estate is limited to control of the incompetent ward's assets. The guardian has no decision-making rights about the ward's personal care or medical needs or wishes.

*H*

**Habendum:** That clause in a deed, not needed in some states, which recites "to have and to hold to said grantee(s), his (her or their) heirs, successors and assigns (as separate property joint tenants-tenants in common)."

**Health Care Standby Durable Power of Attorney:** A form requested by a Health Medical Organization (HMO) if the patient does not have a Durable Power of Attorney for Health Care (DPAHC)

**Heir:** The person who receives an estate or property at the death of the Grantor. Trusts do not have heirs, they have Beneficiaries.

**Henson Trust A.K.A. Absolute Discretionary Trust:** A Trust to benefit disabled people. Specifically, it protects the assets, typically an inheritance, of the disabled person, as well as the right to collect government benefits and entitlements. The key provision of a Henson Trust is the Trustee has "absolute discretion" in deciding whether to use the Trust assets to provide support to the Beneficiary, and in what quantity. This provision means the assets do not vest with the Beneficiary and thus cannot be used to deny means-tested government benefits. In addition, the Trust may provide income tax relief by being taxed at a lower marginal rate than if the Beneficiary's total assets were considered. It can also be used to shield assets from matrimonial division in case of divorce of the Beneficiary. Usually, the Trust assets are immune from claims by creditors of the Beneficiary.

## GLOSSARY

**Hereditament:** Any inherited property. If the property is visible and tangible, it is a *corporeal hereditament*; if it is not, it is an *incorporeal hereditament*.

**Holding Period:** The time a taxpayer holds an asset. This time distinguishes between long-term and short-term capital gains.

**Holding Trust:** See **Pure Trust**. Also known as a *cestui que trust*.

**Holographic Will:** An instrument identified by three elements, namely: a) It is wholly in the handwriting of the Grantor; b) signed by the Grantor; c) dated by the Grantor. Some jurisdictions limit the legality of holographic Wills and rigidly enforce procedural requirements.

**Homestead:** A legal form signed by the owner to exempt property used as a home from forced sale to settle a judgment. Also called a declaration of homestead.

**Hypothecate:** To give an object as security without parting with it.

**Hypothecation:** Originally, a pledge to secure an obligation without delivery of title or possession; now, generally any pledge to secure an obligation, such as the hypothecation of securities for a loan.

*I*

**Immediate Beneficiary:** Also Present Beneficiary and Primary Beneficiary. A Beneficiary of a Trust entitled to receive immediate benefits from the Trust property, whether or not limited to income; opposed to Final Beneficiary. In a Living Trust, the Grantor is the Immediate Beneficiary.

**Immutable:** Unchangeable.

**Impairment:** Diminishment of a person's ability to see, hear, walk, talk and judge distances becomes below the normal level as set by the state. Typically, impairment is caused by drug or alcohol use, but mental illness can be a reason. If the prosecution shows his or her abilities were hindered, a person can be convicted even if the alcohol level is lower than the legal intoxication level.

**In Else:** "In being"; alive.

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**In Loco Parentis:** A phrase referring to a person who takes the place of a child's parent. While it sometimes refers to a guardian, a person not legally appointed as guardian may also stand in *loco parentis*.

**In Personam:** Against the person.

**In Propria Persona:** In his own person; himself or herself. Generally, this refers to when someone appears in court representing himself or herself without counsel.

**In Re:** In the matter of.

**In Rem:** Against a thing and not against a person.

**Incidents of Ownership:** An interest of an individual in a life insurance policy. The policy belongs to that individual for tax purposes. See IRC § 2042.

**Income Beneficiary:** The Beneficiary of a Trust entitled to receive the income from it.

**Income Bond:** A duty in which the promise to pay interest is conditional on the earnings of the obligor. Usually interest is paid in any year only if it is earned.

**Income:** The returns from property, such as rent, interest, dividends, profits, and royalties; opposed to principal, capital, or corpus.

**Incompetency:** Legally, the inability to care for one's property or person, or to make or communicate rational decisions about one's person. A person can only be incompetent if declared unfit by a court. Most incompetent adjudications are the result of mental illness, mental retardation, or other mental disabilities or diseases, for example, from drug or alcohol abuse or from advancing age, as in Alzheimer's disease.

**Incompetent:** One who is legally incapable of managing his or her affairs because of mental or physical deficiency.

**Incorporation by Reference:** Reference in one document to the contents of another document in such a manner to give legal effect to the material to which reference is made.

**Increment:** That which is gained or added.

**Indefeasible:** Incapable of being annulled or made void.

**Indemnify:** To offer or agree to compensate another when a specific event occurs.

## GLOSSARY

**Indemnity Bond:** A written instrument under seal by which the signer, usually with a surety bondsman, guarantees to protect another against loss.

**Indemnity:** Protection or exemption from loss or damage.

**Indenture:** 1) A written contract binding a person to work for another for a given time. 2) A contract to perform a duty.

**Individual Retirement Account (IRA):** An account available to employees and self-employed people who are not participants in a qualified pension plan. Earnings accumulate tax-free. Within prescribed limits, contributions are deductible. IRAs are subject to many requirements, including penalties for amounts withdrawn before age 59 2/3.

**Infant:** 1) The term "infant" derives from the Latin word, meaning "unable to speak." There is no exact definition for infancy. "Infant" is also a legal term meaning a minor, that is, any child under the age of legal adulthood. 2) A child in the earliest period of life, especially before he or she can walk.

**Inherit:** To receive right or title on the death of an ancestor.

**Inheritance Tax:** A tax on the right to receive property by inheritance, which is imposed after payment of all debts and priority taxes; to be distinguished from an estate tax.

**Injunction:** A court order requiring the person or entity served to do, not do, or stop doing an action.

**Installment Gift:** 1) A gift made by selling property on the installment basis. 2) Receiving a note calling for a series of installment payments and forgiving the payments yearly.

**Instrument:** 1) A paper on which writing or printing appears in a legal form, agreement, or contract. Also called a document. 2) A device

**Insurable Interest:** Such an interest in the subject matter of life or property insurance to entitle the person owning the interest to get insurance on it.

**Insurance Policy:** An agreement in which the insurance company, the insurer, agrees to compensate another, the insured, if certain stipulated events occur.

**Insurance Trust:** A Trust composed partially or wholly of life insurance policy contracts.

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**Insured:** The person or entity compensated in case of the happening of an event.

**Insurer:** The entity, usually an insurance company, who agrees to pay or to compensate the insured.

**Intangible Property:** Property that cannot be touched or realized with the senses, such as a legally enforceable right. The right controlled by the holder of a promissory note or a bond is intangible property, the paper and the writing being only the evidence of that right.

**Intellectual Property (IP):** A legal term used to describe creations of the mind such as musical, literary, and artistic works; inventions; symbols, names, images, and designs used in commerce, including copyrights, trademarks, patents, and related rights. Under intellectual property law, the holder of one of these abstract "properties" has certain exclusive rights to the creative work, commercial symbol, or invention covered by intellectual property laws.

**Intent:** The planning and wish to perform an act or to achieve a goal.

**Inter Alia:** Among other things.

**Inter vivos:** A legal term from Latin. The literal meaning is between the living. However, as a legal term, it means a transfer or a gift made during one's lifetime, as opposed to a testamentary transfer which is a gift that takes effect on death. 2) A Trust settled during one's lifetime, that is, an inter vivos trust as opposed to a Testamentary trust set up on one's death, usually as part of a will. 3) An inter vivos trust is synonymous with the more common term Living Trust, but an inter vivos Trust, by definition, includes both the Revocable and Irrevocable Trust, whereas Living Trusts typically refer only to Revocable Trusts

**Interest:** 1) Any right to property. 2) A percentage charged for the privilege of using money. 3) when one invests, whether by devotion through time to a project, or by giving money to the success of an endeavor, he or she has an interest in the outcome, known as vested interest. The return on this investment may be through satisfaction of the success, or by a payout from a portion of profits.

**Interlineation:** 1) Writing between the lines. 2) Insertion of writing on a document.

**International Business Corporation (IBC):** A corporation formed outside the 50 states.

## GLOSSARY

**Interpleader, Bill of:** When two or more people claim a right to the same item, and the person holding the object or account has no way of knowing who has the right. This third party files a Bill of Interpleader to remove himself from the claim, so the people claiming ownership can settle it among themselves.

**Interpret:** 1) To explain the meaning. 2) To translate that which is written or spoken from one language into another.

**Interpreter:** A person sworn at a trial to interpret evidence of foreign or deaf and dumb people during a court proceeding.

**Interpretation:** 1) An explanation. 2) A translation. 3) A person who translates from one language into another.

**Interrogatories:** Questions asked by one party in behalf of another, about a court proceeding or inquiry, the answers being made under oath or affirmation.

**Intestacy:** The condition resulting from a person's dying without leaving a valid Will; the state of being without a Will.

**Intestate:** A person who dies without leaving a valid Will.

**Intestate Succession:** The authority of the State to pass inheritance of property from a person who dies without a Will. Thus, to carry out a "intestate succession" simply means to transfer something after the owner has died under the State law of intestate succession.

**Inter Vivos:** 1) A legal term derived from Latin. The literal meaning is "between the living." As a legal term, it means a transfer or a gift made during one's lifetime, as opposed to a testamentary transfer which is a gift that takes effect on death. 2) The term is often used to describe a Trust established during one's lifetime, for example, an inter vivos Trust, as opposed to a Testamentary Trust established on one's death, usually as part of a Will. An inter vivos Trust is often used synonymously with the more common term Living Trust, but an inter vivos Trust, by definition, includes both Revocable and Irrevocable Trust, whereas Living Trusts typically refer only to Revocable Trusts.

**Inure:** To serve to the use or benefit.

**Invasion of Trust:** A distribution made from the principal of a Trust created either during lifetime or by Will.



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**Invasion Rights:** Are set by the Grantor of a Trust or a Testamentary instrument, to limit the rights of a Beneficiary to intervene with a Trustee's decision to sell assets or to terminate the Trust.

**Invasion Trust:** A Trust from which the Beneficiary may demand to distribute all or some portion of the principal at any time or at specific times.

**Inventory:** 1) A list of a decedent's property and its value. 2) A list of assets held in Trust. 3) A list of items to be sold for profit. 4) Any list where a description of items is required for a specific purpose.

**Inventory Order:** A court order to submit an inventory.

**Investment Adviser:** An individual engaged by an investor for purposes of providing advice and relevant information about the appropriateness and strength of a particular investment arrangement or direction.

**Investor:** An individual or institution exchanging money for an interest in a particular product, such as a contract right granted under a stock or bond or some other investment vehicle.

**Ipsso Facto:** Of itself; by the fact, therefore, by the fact itself.

**IRC:** Internal Revenue Code.

**Irrelevant:** Unrelated; inapplicable; not suitable.

**Irrevocable Trust:** A Trust which, by its terms, cannot be revoked by the Grantor. The Trust Grantor has limited control or no control over the assets. Therefore, Trust assets are excluded from his or her estate at death. The Trust income is not taxed to the Grantor.

**Issue:** 1) All people who have descended from a common ancestor; a broader term than children. 2) When specified in a Trust or Will as "issue of the body," the term excludes adopted children from inheritance.

*J*

**Joinder:** Acting jointly with one or more people; joining.

**Joint Ownership:** The ownership of property by two or more people, usually with the right of survivorship.

**Joint Property:** All property owned jointly with another party or parties.

**Joint Tenancy:** Property held by two or more people where each owner has an undivided interest in the whole property. On the death of one joint owner, the survivor or survivors take the entire property. This is different from tenancy in common and tenancy by the entirety.

**Joint-Tenancy Deed:** The deed stipulates both husband and wife or any two parties own all the property together, not in halves.

**Judgment:** 1) The ability to understand, discern, reason, and form an opinion. 2) The decision or sentence of a court of law; to be distinguished from decree.

**Judicial:** In general a court, judge, or the procedures to administer justice.

**Judicial Settlement:** A settlement of an account by a court order.

**Jurat:** 1) Settling an account by the order, judgment, or decree of a proper court. In many states it is determined by statute. 2) A certificate evidencing an affidavit was properly made before an authorized officer.

**Juris-Consult:** 1) In law, a legal expert who advises judges on particular matters, such as the Law of the Sea. 2) Man learned in the civil law; an expert in juridical science; a professor of jurisprudence; a jurist

**Jurisdiction:** A court's right to hear and decide a case based on the following criteria: venue, action, and parties. All three factors must be met before an action continues.

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*K*

**Kin:** People of the same blood or members of the same family.

**Kind:** In the phrase “distribution in kind,” distribution of the property itself and not the cash value of the property.

**Kindred:** People related by blood.

*L*

**Laches:** An equitable defense, or doctrine, in an action at law. The person invoking laches is asserting that an opposing party has “slept on its rights,” and that, because of this delay, that other party is no longer entitled to its original claim. Put another way, failure to assert one’s rights timely can result in claims being barred by laches. Laches is a form of estoppel because of delay. Under the Federal Rules of Civil Procedure, laches is an affirmative defense, meaning the burden of proving laches is on the party asserting it, normally the defendant.

Laches is similar to 'statute of limitations' except is equitable rather than statutory and is a common affirmative defense raised in civil actions.

Laches stems from the French *lecher* and is closely synonymous with negligence.

**Laches, Doctrine of:** 1) Based on the maxim that equity aids the vigilant and not those who procrastinate. 2) Neglecting to do what should or could, have been done to assert a claim or right for an unreasonable and unjustified time causing disadvantage to another. A party is guilty of using laches by great delay and lapse of time in either responding to or in beginning a complaint or to take action about any legal matter. This wait to take action in Common-Law can sometimes stop the remedy at the discretion of the court. In courts of equity unnecessary delays are damaging to the one unresponsive. If an adverse party unreasonably delays telling disclosing a right or claim and this results in permanent damage to your ability to defend yourself, then its claim may be barred from court.

Laches may be excused for the following:

## GLOSSARY

- Ignorance of the party's rights.
- The obscurity of the transaction.
- The pendency of a suit.
- The delaying party labors under a legal disability, as insanity, infancy and the like.

The Doctrine of Laches consists of the following:

- Unreasonable lapse of time.
- Neglect to assert a right or claim.
- To the harm of another.

If these three elements are met, then the Doctrine of Laches can estop a remedy.

**Land Contract:** A contract for the sale of real estate in which the purchase price is paid in periodic installments by the buyer, who uses the property even though the seller has the title until final payment.

**Lapse:** 1) The falling of a gift into the residuary estate because of the death of the legatee or devisee during the Grantor's lifetime. 2) Slipping away. 3) Failure to meet stated obligations in a specific time. 4) To forfeit because a time period has passed.

**Last Will:** The last Will executed. Since all former Wills ordinarily are revoked by the last one, the term is used to emphasize, it is the latest one and, therefore, the effective Will of the maker.

**Latent:** Undeveloped, dormant, having potential.

**Laws of Descent:** Laws governing the descent of real property from ancestor to heir.

**Lawsuit:** An action or proceeding in a court.

**Lease:** A written document by which right to hold land or a building is given by the owner to another person for a named period of time and for the rent or obligation specified.

**Leasehold:** Land held under a lease.

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**Legacy:** A gift of personal property by Will. It is specifically described so to be singular, such as a painting or a jewel. Now, it often refers to a sum of money and can include real estate. In current terminology Legacy is synonymous with a bequest.

**Legal:** 1) By the forms and uses of law. 2) About law.

**Legal Device:** The legal right granted to an author, composer, playwright, publisher, or distributor to exclusive publication, production, sale, or distribution of a literary, musical, dramatic, or artistic work. See **Copyright**.

**Legal Entity:** One or more people or a thing given a title to recognize it as a body capable of making legal agreements.

**Legal Investment:** 1) An investment conforming to the needs of the statutes. 2) A term used principally about investments by Trustees, other fiduciaries and by savings banks; often shortened to legals.

**Legal Ownership:** An estate or interest in property, which is enforceable in a court of law; to be distinguished from equitable ownership.

**Legal Title:** Title to property recognized by and enforceable in a court of law.

**Legatee:** 1) One to whom personal property is bequeathed in a Will. 2) One who receives a legacy.

**Legible:** Readable, distinct to the eye; not illegible, clear to read.

**Lessee:** The legal entity who leases property and pays rent to the lessor.

**Lessor:** The legal entity who leases property and receives rent from the lessee.

**Letter of Instruction:** A nonlegally binding document written by a Grantor to apprise his or her survivors of information needed on his or her death.

**Letters of Administration:** A certificate of authority to settle a particular estate issued to an administrator by the appointing court; to be distinguished from Letters Testamentary.

**Letters Testamentary:** A certificate of authority to settle a particular estate issued to an executor by the appointing court; to be distinguished from Letters of Administration.

**Leveraged Purchase Duty:** A purchase of an asset paid for largely with the buyer's debt, rather than for cash.

## GLOSSARY

**Liability:** 1) A duty 2) debt 3) obligation 4) responsibility.

**Liable:** 1) Obligated, bound, or responsible. 2) To make good on any loss or damage occurring in a transaction.

**License:** A document in which an officer or authority allows or grants named rights to the bearer.

**Lien:** A right, claim, or encumbrance on property for the payment or discharge of a debt or duty.

**Life Beneficiary Trust:** A Trust where the Beneficiary receives income from the Trust during the Beneficiary's life or the life of another. Also known as income Beneficiary. Compare remainderman.

**Life Estate:** Either an estate for the life of the tenant alone, or an estate for the life or lives of some person or people other than the tenant.

**Life Insurance Trust:** A Trust to which life insurance earnings are paid on the insured's death. The Trust must be properly listed as the policy's Beneficiary. The Trust states the insured's wishes for distribution. Because the Grantor is alive at the time of Trust creation, an inter vivos Trust is the best form for this Trust type. The insured must have no incidence of ownership in the insurance for the Trust to be kept out of his or her estate.

**Life Tenant:** One who owns an estate in real property for his or her own life, or for another person's life or for an indefinite period bounded by a lifetime.

**Lifetime Gifts:** Gifts made during the lifetime of the donor, compared to a testamentary gift, made in a Will and effective on the death of the donor.

**Limited Guardianship:** Statutes in some states allowing a guardian only as much power as is needed to care for the needs of the incompetent. A limited guardianship is used in cases of situational incompetency, whereby an individual is incompetent to decide in only certain areas of his or her life. The guardianship is tailored to the ward's needs.

**Limited Power of Attorney (LPOA):** Only certain powers are given to another for a limited amount of time. See **Power of Attorney**.

**Lineal Descendent:** A person in the direct line of descent, such as a child or grandchild; opposed to collateral heir.

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**Lineal:** In a direct line.

**Lis Pendens:** Lawsuit pending.

**Lite Pendente:** While the action is pending. A recorded legal document giving constructive notice that an action affecting a particular property has been filed in either a state or a federal court.

**Litigant:** 1) The plaintiff or defendant in a lawsuit. 2) A party in a lawsuit.

**Lives in Being:** Lives in existence at a given time.

**Living Trust:** 1) A Revocable Trust created and controlled by a person who usually transfers ownership of assets on death, thus avoiding probate, but may not escape all taxes. 2) Family Trusts, Grantor Trusts, Estate Trusts, Reversionary Trusts, Preservation Trusts, etc. 3) A Trust set up while the Grantor is alive and becomes irrevocable on the death of the Grantor.

**Living Will:** A document provided for by a state's "natural death" statute giving the declarant's doctor and family an advance directive the declarant's life is not to be prolonged if it is medically determined that he or she: (a) Is in a terminal condition leading to imminent death,. (b) Patient has an irreversible injury or illness resulting in a persistent vegetative state. "Imminent death" is a more narrow idea than "irreversible injury or death." Not all states use the same guidelines to decide the force of a Living Will. A Living Will is also known as a Durable Power of Attorney for Health Care (DPAHC) in many states.



**Malfeasance:** Unlawful performance of an act.

**Malpractice:** The improper performance of an act by a professional causing damage.

**Managing Agency Account:** An agency account where an agent has managerial duties and responsibilities about property and in conformity with the agency terms. This is more involved than a safekeeping account and a custody account.

**Mandate:** 1) To command. 2) An authoritative charge or command.

## GLOSSARY

**Marital Deduction:** The value of property deducted from the taxable estate of a decedent spouse and passed to the surviving spouse in fee or within the parameters of Internal Revenue Code § 2056.

**Marital Trusts:** A married individual's Will often creates Testamentary Trusts, normally a Marital Trust and a Credit Shelter Trust. The Living Revocable Trusts often provide for distributions to a Marital and Credit Shelter Trust at the Grantor's death. An estate tax marital deduction is available for property that passes to a surviving spouse in a qualifying manner. The surviving spouse can serve as sole Trustee or Cotrustee of the Marital Trust. Unlimited invasion rights or a general power of appointment ensures qualification for the marital deduction. If the surviving spouse is limited to the Marital Trust's income without current invasion rights to principal, the surviving spouse must be given the ability to compel the Independent Trustee to sell unproductive property and invest in income-producing property.

**Marketability:** 1) The status of a title, when viewed whether it is in such a condition to attract a buyer. 2) A product's ability to be sold.

**Marshal:** To arrange in order. When settling an estate, refers to gathering assets to ensure their proper distribution.

**Massachusetts Rule:** A term often applied to a rule for investing Trust funds declared by the Supreme Judicial Court of Massachusetts in 1830. It is now commonly referred to as the *prudent man rule*. See **Prudent Person Rule** for Trust investment.

**Massachusetts Trust:** An unincorporated organization created for profit under a written instrument or Declaration of Trust. The property held in Trust and managed by compensated Trustees for the benefit of people whose legal interests are represented by Certificates on which the share of distribution of profits is shown. Other names for similar Trust structures are Business Trust, Business Trust Organization and unincorporated Business Organization (UBO).

**Mean:** 1) The middle between two extremes. 2) The expected value of a random variable. 3) Average.

**Mechanics's Lien:** A claim or right on property made by a workman or supplier who has not been paid for services or supplies delivered to the property. The amount of claim needs to be paid before property can be sold.

**Medicaid Benefits:** These benefits are part of Title XIX of the Social Security Act. They are more comprehensive than Medicare benefits, and are only available to those



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who are also eligible for benefits under Supplemental Security Income (SSI) per Title XVI, or Aid to Families with Dependent Children (AFDC) per Title IV, or who otherwise meet the strict income, assets, and related eligibility tests. Medicaid is the primary source of funding for skilled nursing home care in the United States.

**Medicare:** The federal insurance health care program, under Title XVIII of the Social Security Act, for the elderly and disabled. Managed by the Social Security Administration (SSA), mainly through local SSA District Offices. Medicare's two basic parts are Part A-coverage for hospitalization and skilled nursing and health care facilities-and Part B-supplemental medical insurance.

**Memo:** A short note, abstract, or memorandum.

**Memorial:** 1) Something, such as a monument or holiday, intended to celebrate or honor the memory of a person or an event. 2) A written statement of facts or a petition presented to a legislative body or an executive.

**Metes and Bounds:** Measurements and boundaries, applicable most to land measurement.

**Ministerial Acts:** 1) Acts performed by a minister. 2) Administrative functions, 3) Acts performed in a prescribed manner without the exercise of judgment or discretion, but by instructions or rules.

**Minor:** A person under legal age, who has not yet been given full civil rights; the same as infant.

**Misconduct:** An intentionally wrongful, unlawful, forbidden, or improper act.

**Misdemeanor:** A lesser crime than a felony. For example, being a public drunk, speeding or getting a DWI is a lesser crime than carrying two ounces of marijuana.

**Misfeasance:** Improper or wrongful performance of an act.

**Misnomer:** An error in name or place; the use of a wrong name for a party to a document or court proceeding.

**Misrepresentation:** That which is intentionally or unintentionally false and misleading.

**Misstatement:** An incorrect statement.

**Mistake:** An error; a misunderstanding of meaning or intent.

## GLOSSARY

**Mixed Property:** Property that has some of the characters of both real property and personal property, such as fixtures and keys to a house.

**Moral Integrity:** Conditions or qualities of character and reputation considered necessary for an individual to perform competently named acts or hold office.

**Moral Turpitude:** Conditions or qualities of character or actions making up vile, base, wrong, immoral, or inexcusable conduct. The inability to understand consequences, or disregarding such.

**Moratorium:** 1) The temporary suspension by statute to enforce liability for debt. 2) Any authorized delay or stopping of a specified activity. 3) Legal authorization to delay payment of money due.

**Mortgage:** An instrument by which the borrower (mortgagor) gives the lender (mortgagee) a lien on property, commonly real property, as security for paying a debt. The borrower continues to use the property and when the debt is paid, the lien is removed. If the subject matter of the lien is personal property other than securities, such as machinery, tools, or equipment, the mortgage is known as chattel mortgage.

**Mortgagee:** The lender.

**Mortgagor:** The borrower.

**Muniments of Title:** Title, deeds and other original documents showing a chain of title.

*N*

**Natural Guardian:** A parent of a minor; originally the father, but now either the father or the mother.

**Natural Guardianship:** The parents of the minor are its natural guardians.

**Natural Law or the Law of Nature:** (Latin: *lex naturalis*) 1) An ethical theory assuming the existence of a law set by nature which, therefore, has validity everywhere. 2) Sometimes natural law opposes the positive law of a given political community, society or nation-state, and can thus function as a standard by which to criticize positive law. In natural law jurisprudence, positive law cannot be known without reference to the natural law, or to something similar. 3) Natural law, used in this sense, can criticize decisions about the statutes, but less so to criticize the law itself. Natural law is

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synonymous with natural justice or natural right (Latin *ius naturale*), although most present-day political and legal theorists separate the two.

**Neglect:** To disregard; to fail to perform; to fail to exercise care in executing tasks.

**Negligent Carelessness:** The lack of ordinary or reasonable care. Negligence is not intentional.

**Negotiable:** Transferable.

**Negotiable Instrument:** A document whose purpose is to transfer money, such as a check, draft, or bill of exchange. Also called commercial paper or bearer bond.

**Net Gift:** A gift to which the donee agrees to pay the donor's gift tax liability.

**Net Income:** A person's income after expenses are paid.

**Net Worth:** The value of a person's assets minus his or her liabilities.

**Next of Kin:** Close relatives. The definition differs in many jurisdictions.

**Nonadverse Party:** Grantor's father, mother, issue, brother or sister; an employee; a corporation in which the Grantor has most of stockholdings, and, thus, voting control; a subordinate employee of a corporation in which the Grantor is the executive.

**Nonfeasance Omission:** Failure to perform an act that should be done.

**Nonlegal Investment:** An investment by a legal representative not conforming to legal requirements of a statute or other operative law.

**Nonrecourse Debt:** A debt on which the named security alone may be foreclosed to satisfy the debt.

**Nonresident:** A person who lives outside a particular jurisdiction.

**Notarial Act:** 1) An act performed in conformance with the Notary law by a qualified and commissioned Notary Public. 2) A notarization.

**Notarial Certificate:** A written statement, signed and sealed by a Notary, describing a notarial act. Also called a Notary Certificate.

**Notarization:** To perform a notarial act or notarization.

**Notary Bond:** An agreement called a bond, signed by a surety company and the Notary. The surety company is the Principal and compensates anyone who suffers

## GLOSSARY

damages caused by the Notary's improper performance of notarial acts, providing the Notary, himself or herself, cannot pay the damages.

**Notary Public:** A quasi-public official who, depending on the state, holds the power to acknowledge signatures, administer oaths and affirmations, takes depositions and issues subpoenas in lawsuits. Notaries public are most commonly used to witness signatures, especially on court papers such as affidavits. A.K.A. Notary.

**Notary Seal:** 1) The imprint or embossment made by the seal of a Notary. 2) A device used by a Notary that makes an imprint or embossment.

**Note:** A written agreement to pay a certain sum of money at a specified time.

**Notice to Creditors:** A statutory requirement provided in a probate proceeding to give formal notice publically through a newspaper of common distribution that: a) the creditors have a specific period of time in which to make claims against the estate, b) an individual has died

**Nunc Pro Tune:** Now for then; a tardy act made retroactive to take effect from the time when it should have been done.

## O

**Oath:** A solemn pledge or promise, containing reference to a Supreme Being. A person who intentionally makes false statements under oath is punishable for perjury.

**Obiter Dictum:** That which is said in passing.

**Obligation:** 1) A legal or moral duty to perform an act. 2) A sum of money the obligor has agreed to pay.

**Obligee:** 1) A person or entity for whom something is done or not done. 2) A person or entity to whom a debt is owed, such as a bondholder.

**Obligor:** 1) A person or entity who has agreed to perform an act. 2) A person who owes money in a duty. 3) One who has a duty to carry out, such as a corporation that issues bonds.

**Offer:** 1) To make a proposal. 2) A proposal.

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**Offshore Jurisdiction:** 1) Better known as a tax haven, a country hosting banking, insurance, and other financial activities, juridically away from onshore regulatory authorities 2) Jurisdiction of a country outside the boundaries of the United States. Some examples of well-known offshore jurisdictions are: The Bahamas, British Virgin Islands, Isle of Man, Belize, Antigua, The Turks and Caicos, Nevis and St. Kitts, Luxembourg, etc.

**Offshore Trust:** A Trust formed in an offshore jurisdiction.

**Omission:** 1) A failure to perform a duty. 2) Leaving out information. 3) Failure to Act.

**Omnibus Clause:** 1) A clause in a decree of distribution by which "any other property not now known or discovered, which may belong to said estate or in which said estate may have any interest" passes to the distributees named without specific description. 2) Containing two or more matters.

**Open-End Mortgage:** A mortgage under which the borrower may secure extra funds from the lender, usually stipulating a ceiling amount to borrow. Example: Smyth gets an open-end mortgage to buy a home. Under the mortgage agreement, Smyth may borrow more funds over the maturity of the loan as long as the unpaid principal does not exceed 80% of the home's appraised value.

**Option:** 1) An agreement to keep an offer open for a named time. 2) A paid privilege allowing a person with the choice the right to buy or sell something at a fixed price and time. 3) The power or right to make a choice. 4) A right, for a consideration, to do or require an act to be done in the future; choice. 5) The right to purchase stock at a preset price at a future time, for example, stocks, bonds or futures.

**Oral:** Spoken.

**Original:** About documents, the first one made; one from which a copy or reproduction might be made.

**Original Investment:** 1) An investment received by the Trustee as part of the decedent's estate or from the Grantor of a Living Trust. 2) The principal used to buy stocks, bonds, homes, apartments. Until there is a gain from the original funds, there is no "return."

**Original Issue:** Securities issued when a company is first incorporated.

**Original-Issue Discount:** Under the income tax law, a system under which interest is imputed on a debt instrument failing to state a total interest equal to the applicable federal interest rate for loans of that term. See IRC §§ 1271-1275.

## GLOSSARY

**Outright Gift:** 1) Real or personal property given by an individual or entity directly to a donee, the one who receives the gift. For example, when a father gives a life insurance policy with all ownership rights to his son. 2) Gifts to an individual not made through a Trust.

**Overriding Royalty:** Interest in an unsevered investment lessee keeps when fulfilling a sublease or assignment. The lease is not part of the original royalty, therefore, it is termed "overriding."

**Overt Act:** An obvious act done openly while pursuing an avowed interest or design; in contradistinction to a covert act.

**Overt:** Open, public, manifest, obvious.

## *P*

**Pari Passu:** In equal degree; pro rata, proportional.

**Parish:** 1) A section of land where boundaries are decided by political and population considerations within a state. 2) The state of Louisiana uses the term Parish instead of County.

**Parol:** Oral, such as parol evidence or oral evidence.

**Parole:** Has different meanings depending on the area and judiciary. All the meanings arise from the French parole, meaning "(spoken) word." The term became associated with the release of prisoners based on prisoners giving their word of honor to abide by certain limits.

**Partner:** A member of a partnership.

**Partnership Agreement:** An agreement made between two or more people.

**Party (Parties):** 1) A person or group taking part in a legal agreement, transaction, or proceeding. 2) A litigant.

**Party Wall:** A wall for the common benefit and use of two owners. The wall separates their property.

**Passive Trust:** A Trust about which the Trustee has no active duties to perform, being merely a titleholder; the same as a Dry, or Naked Trust; opposed to an active Trust.

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**Patent:** A grant issued by a government Patent Office to the inventor. The inventor, as the owner of the patent, has the right to exclude others from making, using, or selling the invention covered by the patent anywhere, for example, in the United States for 17 years from the date of the patent's issue. The patent contains the detailed description of the invention and how to make or use it. It also provides rights against infringers. (Note: Because of the General Agreement on Tariffs and Trade (GATT) treaty the time period for patents may have changed.)

**Patent Land:** The precursor to allodial title. A conveyance of title from a government land grant. Once land is received from the government, including all mineral rights, it can be filed under allodial title at the county recorder's office. Real property in Common Law is measured from the earth's surface extending downward to the center of the earth and upward into space, including all things permanently attached to it by nature or by people, as well as the interests, benefits, and rights inherent in real estate ownership.

**Pawn:** A person serving as security; hostage.

**Payable:** Money to be paid.

**Payee:** The person who receives payment.

**Payment:** 1) Satisfaction of a debt accepted by the payee. 2) A specific sum of money.

**Payor:** The person who pays.

**Penalty:** 1) Punishment. 2) A sum of money to be paid if a person or entity fails to fulfill the terms of an agreement.

**Pendente Lite:** During the continuance of a suit at law or in equity.

**Pension Trust:** A Trust set up by an employer to provide benefits for disabled, retired, or superannuated employees, with or without contributions by the employees.

**Per Capita:** 1) A term used to equally distribute property; distribution to people as individuals (*in capita*) and not as members of a family. 2) According to the number of people, share and share alike.

**Per Se:** By itself; as such.

**Per Se Rule on Incidents of Ownership:** A position held by the IRS, now seemingly relaxed, that incidents of ownership on a life insurance policy held by the insured in a fiduciary capacity causes the insured's estate to include the earnings, although the insured could receive no personal benefit from the Trust or estate.

## GLOSSARY

**Per Stirpes:** A term used to distribute property; distribution to people as members of a family (*per stirpes*) and not as individuals (*for each person*). Two or more children of the same parent take per stirpes when together they take what the parent, if living, would take.

**Perjury:** 1) The crime, usually considered a felony, of falsely swearing or willfully violating an oath or affirmation. 2) A false statement made under oath or affirmation.

**Perpetuity:** Duration without limit about time, eternity, forever.

**Persistent Vegetative State (PVS):** Partial brain death of the upper cerebral hemispheres due to a lack of oxygen. An irreversible condition in which the patient, through awake, is not responsive to stimuli, cannot swallow, and must be artificially supplied with nutrition and hydration. By using a Durable Power of Attorney for Health Care or other similar legal instrument, authority to remove life support can be given to a health-care agent prior to any event of this nature.

**Person:** Either a human being or a corporation, unless the context shows that one or the other is intended. Most legal documents refer to a corporation.

**Persona conjuncta:** A personal connection.

**Personal Effects:** Goods of a personal character, such as clothes and jewelry.

**Personal Holding Company:** A closely held corporation owning the stock of other corporations.

**Personal Holding Company Tax:** A surtax imposed on closely held corporations that receive most of their income from passive sources, such as rents, royalties, interest, and dividends. See IRC §§ 541 et seq.

**Personal Property:** 1) That which can be proven through receipt, deed or other acceptable method to belong to a person. 2) In the Common-Law, personal property is referred to as chattels. It is distinguished from real property, or real estate. 3) In the civil law personal property is known as movable or movables—any property that can be moved from one location to another. Immovable property or immovables refers to land and buildings. 4) A.K.A. Personality. 5) All property other than real property.

**Personal Representative:** A general term applicable to both executor and administrator.

**Personalty:** Also known as personal property.



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**Petition:** 1) A formal request to an authority. 2) Correct, change, or put right to make a claim for damages. 3) The term also has a specific meaning in the legal profession as a request, directed to a court or administrative tribunal, seeking relief.

**Pick-Up Tax:** A state death tax measured by the allowable federal estate tax credit for state death taxes.

**Plaintiff:** The party who begins a lawsuit.

**Pleadings:** The successive statements by which the plaintiff sets forth his or her causes and claim, and the defendant his or her defense.

**Pledge:** A pawn; a bailment of personal property as security for some debt or engagement.

**Plenary Guardianship:** Guardianship with decision-making powers about personal care, health care, and estate and asset management. It combines the authority of a guardianship of the estate and of the person. Often, a bank acts as a plenary guardian.

**Policy of Assurance:** A.K.A. Policy of insurance or insurance policy.

**Pooled Income Fund:** 1) An instrument containing a contract insuring an individual against the loss of life or some other item, such as property. 2) A Charitable Trust created and upheld by a charitable institution to which individual donors may give gifts, and to which the donor or some named person keeps for life (or a term of years) the right to a proportionate share of the Trust's income. The remaining funds are vested in the charity.

**Post:** After; afterward.

**Posthumous Child:** A child born after the father's death; to be distinguished from after-born child.

**Power:** The authority or right to do or stop from doing a particular act, as a Trustee's power of sale or power to withhold income; to be distinguished from Trust powers.

**Power of Appointment:** A right given to a person to dispose of property that he or she does not own. A power of appointment may be general or special. Under a *general* power, the donee may exercise the right as he or she sees fit. A *special* power limits the donee to those in favor of whom he or she may exercise the power of appointment. For example, a wife who is given the power to appoint among her children has a special power of appointment, which is also known as a *limited power of appointment*.

## GLOSSARY

**Power of Attorney (POA):** A verbal or written document, witnessed and acknowledged, granting the decision-making power of the principal (the grantor of the power) to an agent, or *attorney-in-fact*, named in the power instrument. A traditional power remains valid only as long as the principal has the ability to end it (that is, remains legally competent to do so). If the attorney-in-fact is sanctioned to act for his or her principal in all matters, he or she has a *general power of attorney*; if he or she has authority to do only special things, he or she has a *special power of attorney*. In financial transactions, the power of attorney is usually special. Special power of attorney is also known as *limited power of attorney*. Many institutions, such as hospitals, banks and, in the United States, the Internal Revenue Service, require a power of attorney to be in writing before they honor it, and they usually want to keep an original for their records.

**Preamble:** An introductory portion.

**Premium on Securities:** The amount or percentage by which a security is bought or sold for more than its face or par value.

**Prescription:** Title gained in law by long possession. Occupancy for the period prescribed by the Code of Civil Procedure is enough to bar an action for the recovery of the property. This gives title by prescription.

**Present Beneficiary:** The same as Immediate Beneficiary.

**Presentment:** 1) The act of demanding payment on a negotiable instrument. 2) A report made by a jury. 3) The act of giving or presenting a formal statement of a legal matter to a court or an authorized person. 4) The report written by a grand jury about an offense and based on the jury's own knowledge and observation. 5) The act of presenting a bill or note for payment.

**Pretermitt:** To omit; to pass by.

**Pretermitted Child:** A child to whom a Will leaves no share of the parent's estate without affirmative provision in the Will showing an intent to omit. It may be an after-born child, a posthumous child, or a child mistakenly believed to be dead.

**Pretermitted Heir:** An heir not included in the devolution of a decedent's estate.

**Prima Facie:** On its face; presumptively; presumed to be true; at first sight, apparent.

**Primary Beneficiary:** The same as Immediate Beneficiary; opposed to Secondary Beneficiary.

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**Principal:** 1) In either a Trust or a Will, the real and personal property initially making up the corpus of the estate or subsequently transferred to it, from which income is produced. 2) In an agency relationship, the principal is the individual who approves another individual, known as an agent, to act on his or her behalf.

**Principal Beneficiary:** The same as Final Beneficiary.

**Principle:** 1) A basic truth, law, or assumption. 2) A rule or standard, especially of good behavior. 3) The collectivity of moral or ethical standards or judgments. 4) A fixed or predetermined policy or mode of action. 5) A basic or essential quality or element settling intrinsic nature or characteristic behavior. 6) A rule or law about the function of natural phenomena or mechanical processes. 7) A basic source. 8) A fundamental general statement accepted as basic and incontrovertible.

**Private Annuity:** The sale of property to another in exchange for payments for life by Internal Revenue Service tables. The agreement must be in writing.

**Private Trust:** 1) A Trust created for the benefit of an appointed Beneficiary or named Beneficiaries, such as a Trust for the benefit of the Grantor's spouse and children, as opposed to a Charitable, or Public Trust. 2) A Trust created under a Declaration of Trust or under a Trust agreement, such as a Living Trust or an Insurance Trust; opposed to a Trust coming under the immediate supervision of a court. 3) A Trust created under private contract per Article I, Section 10 of the U.S. Constitution.

**Private Trustee:** A position set up through the Trust Indenture; a private agreement between the Grantor of a Trust and the Trustee in alignment with the United States Constitution Article I, §10. This arrangement differs from a bank Trustee or a corporate Trustee; both mainly focus on legalities and accounting. A Private Trustee works for and with the family and Beneficiaries becoming familiar with their needs and wishes. Thus, the Private Trustee is more likely to move the Trust group forward, keeping these priorities in mind. Usually the Grantor and the Trustee work closely together setting up investments for the Trust.

**Privilege:** Benefits granted or allowed by a governing body. Exemption for certain burdens, or preferred treatment. All privileges come with limits and requirements. An IRA is allowed continue tax-free until a person reaches age seventy. Taxes apply when funds are withdrawn.

**Privity:** Closeness or mutuality of relationship.

## GLOSSARY

**Probate:** The system whereby a court of common jurisdiction takes authority over the assets of the estate of an individual and decides the legality of a Will. The court appoints a legal representative to manage the affairs under the jurisdiction of the court.

**Probate Court:** The court having jurisdiction about Wills and intestacies and sometimes guardianships, adoptions, etc.; also called Court of Probate (Connecticut); Surrogate's Court (New York); Ordinary Court (Georgia); Orphan's Court (Delaware, Maryland, New Jersey, Pennsylvania); and Prefect's Court (New Mexico).

**Probate Estate:** This governs assets of a decedent to be transferred subject to the terms of the decedent's Will or to pass by intestacy if there is no Will. Many assets, for example, life insurance or property held jointly, are not part of the probate estate. Nothing in a Trust is part of the probate estate.

**Professional Intermediary:** 1) An individual or institution functioning as an independent contractor to make an arrangement between an investor and an institution selling contract rights, such as insurance policies and various fund types. 2) Broker. 3) Manager.

**Profit-Sharing Trust:** A Trust set up by an employer or individual, usually a corporation, for the employees or Beneficiaries to share in the profits of the enterprise.

**Promissory Note:** A written agreement containing a promise to pay a named sum of money in increments or on demand or at named time.

**Property:** The assets, whether real, personal, or mixed, owned by a person.

**Pro Se:** Latin, "For Self." A person representing his or herself as a litigant.

**Prove:** To set up the truth by presenting evidence or testimony.

**Proxy:** 1) A person empowered by another to act as his or her agent in voting. 2) The instrument evidencing the authority of the agent to vote.

**Prudent Person Rule for Trust Investment:** A term applied to a rule laid down by statute or by judicial decision. It allows a fiduciaries to apply the standard of a prudent investor instead of selecting investments according to a list prescribed by statute or by some governmental agency under authority of law. It was formerly known as the "American Rule" or the "Massachusetts Rule." Historically known as "Prudent Man Rule."

**Pub. Res. C.:** Public Resources Code.

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**Public:** 1) People of any affiliation. 2) Anything that may be used, viewed, or inspected by people. 3) Not private. 4) All the people who have rights, privileges and duties within a community, state, or nation. 5) Not copyrighted.

**Public Administrator:** In many states, a county officer whose main duty is to settle the estates of people who die intestate when there is no member of the family, creditor, or other person having a prior right of administration able or willing to manage the estate.

**Public Document:** Any document open to the public for inspection.

**Public Guardian:** An employee of the state available to be appointed as guardian of either the person or the estate for an incompetent who would otherwise lack a guardian. This may be because the estate will not support a bank to act as guardian. Public guardians are ready to provide substituted consent if no one else is available to do so or if the state considers the guardian the best choice as guardian. A public guardian is also sometimes called a public Trustee, public fiduciary, or state guardian.

**Public Record:** Any record open to the public for inspection.

**Public Trust:** The same as a Charitable Trust as opposed to a Private Trust.

**Punitive Damages:** Exemplary damages.

**Purchase:** A term applicable to every method of lawfully gaining property except by descent, that is, by right of blood or inheritance.

**Pure Trust:** 1) A contractual Trust. Almost all Pure Trust Indentures are written based on the right to contract, Constitution Article I, Section 10: "No State shall . . . pass any . . . law impairing the obligation of Contracts" . . . Since pure Trusts are created solely through contract, this means no legislative body can interfere. Pure Trusts hold either one asset, or a group of assets under one category. One category may be "collections," or one asset may be an automobile or a boat. A Pure Trust does not require an Employer Identification Number (EIN) or a Trust Identification Number (TIN), as any financial transactions are handled through a management organization acting as Trustee. Each Pure Trust must have separate Beneficiaries or a different Grantor to qualify as a separate Trust. 2) Under Common Law, a Pure Trust is an arrangement whereby a Trustee or Trustees manage money or property owned by the Trust by one person for the benefit of another. 3) A Grantor creates a Pure Trust and entrusts some or all of his or her property to people of his choice, the Trustees. The Trustees are the legal owners of the Trust property, and hold the property for the benefit of one or more individuals or organizations, known as the Beneficiary, usually named by the Grantor. The Trustees

## GLOSSARY

owe a fiduciary duty to the Beneficiaries, who are the "beneficial" owners of the Trust property. This Trust type usually does not interact with the public

**Pursuant:** To carry out; regarding; according to.

**Pyrrhic Victory:** A victory won with staggering losses, such as that of Pyrrhus (319-272 B.C.), King of Epirus, over the Romans at Asculum in 279 B.C.

## Q

**Qualification:** A requisite or characteristic that makes a person or thing suitable to serve or to be used for a specific purpose.

**Qualified Pension Plan:** A plan qualifying for the federal income tax benefits. An employer may deduct contributions to a qualified plan in the year contributed, but the employee need not report any income until he or she receives the benefits.

**Qualified Subchapter S Trust (QSST):** 1) A Trust that, because it meets certain requirements, may be a shareholder of an S corporation. The Trust must (a) own stock of one or more S corporations. (b) Distribute all of its income currently to one U.S. resident or citizen. © Make principal distributions during the income Beneficiary's life to the income Beneficiary. (d) Require the income Beneficiary's interest to end at death or when the Trust ends. (e) Distribute the Trust assets to the income Beneficiary if the Trust terminates while he or she is alive. (f) Require the Beneficiary, or his or her legal representative, to elect to be treated as the Trust's owner. See IRC § 1361. This means the Beneficiary is responsible for the taxes, unless it is an offshore Beneficiary who is not subject to U.S. Taxes or a charitable organization.

**Qualified Terminable Interest Property (QTIP):** 1) An interest in property passed from one spouse to the other. This qualifies for an estate tax marital deduction only if a) the surviving spouse receives the income from the property, payable yearly, during his or her life, b) no person has the power to appoint the property to anyone other than the surviving spouse.

**Quantum Meruit:** As much as he has deserved. When a person employs another to do work for him, without an agreement for compensation, the law implies, the employer is still responsible to pay for the workman's services. In such case the workman may declare the employer promised to pay him as much as he reasonably deserved, and then aver that his trouble was worth more money, which the defendant omitted to pay. This

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is called an *assumpsit* on a *quantum meruit*. When there is a written contract for a stipulated amount and mode of compensation for services, the plaintiff cannot abandon the contract and resort to an action for a *quantum meruit* on an implied *assumpsit*.

**Quasi:** 1) As, as of a similar nature. Used as a prefix; suggests some likeness to, but not an identity with the word to which it is prefixed. 2) Almost the same.

**Quasi-Contract:** A term used in the civil law. A quasi-contract is the act of a person, allowed by law, by which he obligates himself towards another, or by which another binds himself to him, without any agreement between them. No consent is needed. The obligation arises from the law or natural equity, on the facts of the case. These acts are quasi-contracts, because, without being written contracts, they bind the parties as contracts do. Quasi-contracts may be multiplied almost to infinity. When a person manages a common property owned by himself and others, not as partners, he is bound to account for the profits, and to be paid back for the expenses bore by the quasi-contract created by his act, this is known as *communio bonorum*. All people, even infants and people destitute of reason, thus incapable of consent may be obliged by the quasi-contract, which results from the act of another. They may also oblige others in their favor; for it is not consent which forms these debts; they are contracted by the act of another, without any consent.

**Quid Pro Quo:** 1) Services or goods traded for equal value. 2) In return, in exchange, compensation. 3) Under the Common Law, a binding contract must involve consideration: that is, the exchange of something of value for something of near equal value. If the exchange appears excessively one-sided, the court may question a *quid pro quo* transaction, and thus void a contract.

**Quiet Title:** 1) An action to quiet title is a lawsuit brought in a court having jurisdiction over land disputes, to prove a party's title to real property against anyone and everyone; thus "quiet" any challenges or claims to the title. This legal action is brought to remove a cloud on the title so plaintiff and those in privity with him or her may forever be free of claims against the property. 2) A lawsuit is also sometimes called a try title, trespass to try title, or ejectment action "to recover possession of land wrongfully occupied by a defendant." There are slight differences among these. An ejectment action typically removes a tenant or lessee in an eviction action, or an eviction after a foreclosure. Nonetheless, in some states, all terms are used synonymously.

**Quitclaim Deed:** A legal instrument by which one conveys all of his right, title and interest in real estate to another party without giving any guarantees to what, if any, that



right, title, or interest is in the property. This deed means, "I quit my claim to the property."

## *R*

**Ratable Distribution:** To distribute an estate according to a proportionate rate.

**Ratable:** Proportionate.

**Ratification:** A formal act of adopting, approving, or sanctioning.

**Ratify:** To adopt formally, approve, or sanction.

**Real Estate:** The right, title, or interest that a person has in real property, as distinguished from the property itself, which is the subject matter of the interest.

**Real Property:** Land, buildings, and other kinds of property legally classified as real in statutory law; in Common Law real property is from the center of the Earth into space and all people, land, buildings and benefits, opposed to personal property. See **Real Estate**.

**Reasonable Care:** The degree of care expected of a normally prudent person of average intelligence in a given situation. Also known as ordinary care.

**Rebuttable presumption:** 1) A presumption which may be refuted by evidence; it shifts the burden of proof. 2) The term means the burden is on you to prove you did not carry out some crime that another asserts you did. This is the reverse of "innocent until proven guilty."

**Recapitalization:** A revision of a corporation's capital by an exchange of securities.

**Reconveyance:** 1) A change in the stock, partnership, or debt interests of a corporation or partnership, sometimes performed to freeze the value of one party's interest artificially. 2) The transfer of title to land back to the debtor after a mortgage or Trust deed has been paid.

**Recordation:** With a mortgage, recording a lien against certain property, described in the mortgage. Such entry usually is made in the public record of the county or other jurisdiction in which the property is located.



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**Recording:** The act of entering or recording documents affecting or conveying interests in real estate in the county recorder or registrar. Recorded documents protect the interests of people involved and provide constructive notice of rights and interests in land. Documents accepted for recording are time-stamped, receive a unique document number, are indexed, the image captured and the original document returned to the submitter.

**Recourse Debt:** A debt on which the debtor is personally liable. If the creditor forecloses on the specified security (if any) and the proceeds of its sale are inadequate to satisfy the debt, the creditor may take the debtor's other assets and sell them.

**Redemption:** 1) The act of redeeming or the condition of having been redeemed. 2) Recovery of something pawned or mortgaged. 3) To pay an obligation, as a government's payment of the value of its bonds. 4) Deliverance on payment of ransom. 5) The purchase of property that has been encumbered. The purchaser pays the debt to obtain the property. 6) Rescue. 7) A bond. 8) In religion, one is saved through the action of another who makes payment through sacrifice.

**Redemption Agreement:** A buy-sell agreement under which the corporation or partnership agrees to buy out the interest of a shareholder or partner; to be distinguished from a cross-purchase agreement.

**Register:** A list of any facts considered important. Usually a log of items, or a recording of people who came to an event, or did a particular act.

**Registrar of Wills:** In some states, a court officer who records and preserves Wills admitted to probate and acts as clerk of the probate court.

**Release:** 1) To surrender or give up a right or claim. 2) To relinquish an item or claim.

**Remainder Interest:** The right given a Beneficiary of a Trust to receive the Trust fund on some event, such as the death of another Beneficiary. This can apply to life estates or terms of years where a Beneficiary can receive income from the Trust.

**Remainder:** That part of the estate left after all other provisions of the Will are satisfied. This remainder can cause another estate to begin by using the remainder portion of the previous estate to become the initial corpus of the new estate.

**Remainderman:** As applied to a Trust, a person who receives the principal of a Trust when the Trust ends. A *contingent remainderman* receives the principal only if a named future event occurs. A *vested remainderman* has an absolute right to receive the Trust

## GLOSSARY

principal. The remainderman may also receive income from the Trust prior to the Trust ending. The Trust ends when the last named person in the Trust dies. 2) A remainderman can receive income from the Trust before the death of the last generation so named in the Trust documents, and then the Remainderman receives the percentage of the principal allocated by the Trust Instrument.

**Renounce the Will:** The laws of many states allow a surviving spouse to receive a statutorily prescribed share of the deceased spouse's estate instead of the share provided by the Will. To use this alternative, the spouse **must** *renounce the Will*. See **Election Against the Will**.

**Renunciation:** A declaration to abandon rights to property.

**Res:** That which is held and reserved; the body, corpus or the capital of a Trust as opposed to the income or interest.

**Rescind:** 1) To void or cancel an agreement by declaring that it never existed. 2) To void or cancel an agreement by restoring conditions existing before the agreement took effect. 3) Annul

**Reside:** To live permanently in a fixed place.

**Residence:** The place where one lives, whether temporarily or permanently. 2) Bodily presence. See **Domicile**.

**Residuary Estate:** The state of being left over, what is not distributable because the person to receive the funds is not available, may have died or because of possible medical complications. See **Lapse**.

**Residuary Legatee:** One who receives the residue of an estate after paying the Grantor's debt and any costs or amount due for legacies. See **Legacy**.

**Residue (or Residual Estate):** The portion of an estate remaining after all debts have been paid and specific bequests and devises have been distributed. If there is a residuary clause in the Will or Trust, it gives direction of how to distribute the residue.

**Resignation:** The formal statement of one's intent to end an appointment and stop performing the duties of the office.

**Respondent:** 1) A person who is involved in a lawsuit. 2) A litigant. Usually, the first respondent is the defendant.

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**Responsibility:** 1) Willingness and agreement to be obligated for an action or recourse. 2) Accountability, dependability. 3) An agreement to perform a duty. 4) In a contract, a agreement to protect or make good for damages.

**Restraint on Alienation of Property:** A limit on the right of a person to transfer title to property or property rights.

**Restriction:** A limit on the use of real property, originated by the owner or subdivider in a deed. Also termed a deed restriction, for example, one cannot drill below the water table.

**Resulting Trust:** A Trust arising in law from the acts of the parties, regardless whether they actually intended to create a Trust. For example, a person disposes of property under circumstances that raise an inference he or she did not intend for the person taking or holding the property to have the beneficial interest in it. This is distinguished from an Express Trust and a Constructive Trust.

**Return of Capital:** The original investment returned to the investors also known as capital owners, shareholders, partners, unit holders. The amount includes the funds created through the growth of the investment, often referred to as the net income v. the taxable income. It should not be confused with return on capital which measures a "rate of return."

**Return on Capital:** 1) The interest rate, or other measurable method to fix the gain. How fast a business produces a profit is often used as a rate of return.

**Reversion:** 1) The interest in an estate remaining in the Grantor after a particular interest, less than the whole estate, has been granted by the owner to another person; to be distinguished from remainderman. The reversion remains in the Grantor; the balance goes to a grantee. 2) Rights under a copyright returned when the publisher fails to perform to certain standards.

**Reversionary Trust:** Any Trust where the ownership of the Trust assets goes back to the Grantor when the Trust ends.

**Revocable Trust:** A Trust that, by its terms, may be stopped by the Grantor or by another person, but only with the consent or approval of one or more other persons. A Revocable Trust provides for professional management of assets, while leaving the Trustor the choices of ending or changing Trustees and returning the assets to personal control, if warranted; opposed to an Irrevocable Trust and not the same as a Living Trust.

## GLOSSARY

**Revocation of a Will:** The rendering inoperative of a Will for cause in a manner named by law.

**Revoke:** 1) To end a person's commission or appointment before its normal close. 2) To cancel or void.

**Right:** 1) Correct. 2) Something to which a person has a fair and just claim. 3) Qualities that are considered reasonable, acceptable, fair, and just.

**Right of Survivorship:** A right to property owned as joint tenants or as tenants by the entirety, whereby one joint owner succeeds to the interest of a deceased joint owner.

**Right to Die:** A right arising from ideas of human anatomy and self-determination, two concepts long recognized by law. Common Law recognizes an individual's right to be free of nonconsensual invasions of his or her body. This right is grounded in the constitutional right to privacy. The United States Supreme Court found this to exist in the Fourth Amendment to the Constitution. Under the right to privacy, an individual has the right to refuse treatment, a right that also forms the basis of the doctrine of informed consent.

**Royalty:** A payment for use of a licensed product. See **Royalties**.

**Royalties:** Usage-based payments made by one party (the "licensee") to another (the "licensor") for continuing use of an asset, most typically an intellectual property right. The rate of royalty applied in a given case is determined by various factors. The most notable of these are: market drivers and demand structure, territorial extent of rights, exclusivity of rights, innovation and stage of development, sustainability of the technology, degree and competitive availability of other technologies, inherent risk, strategic need, the portfolio of rights negotiated, fundability, deal-reward structure.

**Rule Against Accumulations:** 1) The limit imposed by Common Law or by statute on the build-up of income in the hands of a Trustee. 2) Laws restricting an unreasonable period of time for accumulating income. Payments must be made to Beneficiaries and investors. For example, under the Option Modes of Settlement of a Life Insurance policy or per a Trust Indenture for an investment, there must be a payout under certain circumstances, or after a stipulated time unless the Beneficiary is a minor.

**Rule Against Perpetuities:** A rule of Common Law limiting any estate or interest in property passing on generation after generation in perpetuity. It forces the Trust to end or to vest within a period measured by the life or lives of those who created it plus 21 years. Many states later adjusted the rule by statute. The rule concerns the utility of

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property and tries to prevent people from tying up assets for too long of a time—an idea often referred to as control by the “dead hand” or “mortmain.” That is, the purpose is to “limit the Testator's power to earmark gifts for remote descendants. Some argue the rule also prevents concentrating wealth in society. When a part of a grant or Will violates the Rule, only that portion of the grant or devise is removed; all other parts not in violation are still valid conveyances of property.

## S

**S Corporation:** A closely held corporation whose stockholders have elected to have corporate net earnings taxed directly to themselves, rather than taxed once at the corporate level and again when paid out as dividends. See IRC §§ 1361 et seq. Also, referred to as a subchapter S corporation.

**/S/:** Used in conforming a copy to show that a person signed in the place where the name has been typed next to /S/.

**Safe-Deposit Box:** Usually a box or safe in the vault of a bank, to rent in which valuables are kept. Private facilities also have safe-deposit boxes.

**Safekeeping Account/Custody Account:** An agency account where the agent receives, keeps safe, and delivers the property on account on demand of the principal or on the principal's order. This is different from a managing agency account.

**Satisfaction:** A document acknowledging the debt is paid, such as a satisfaction of a mortgage.

**Scroll:** A written design used in place of a written signature or seal. Also called a scrawl.

**Seal:** An impression, device, sign, or mark recognized by statute or by judicial decision as having the legal effect of a Common-Law seal. The letters “L.S.” or a scroll made with a pen are recognized seals, as is a seal of wax or gummed paper, or one embossed on the paper itself.

**Second Beneficiary:** A Beneficiary whose interest in a Trust is postponed or is subordinate to that of the primary Beneficiary.

## GLOSSARY

**Secretary:** 1) In the tax code, the title usually refers to The U.S. Secretary of the Treasury. 2) A secretary is a general administrator with office-procedure and equipment skills. In a Trust, the Executive Secretary is an officer with authority to handle Trust documents and may have assistants.

**Securities:** Literally, things given, deposited, or pledged to assure fulfilling a debt. In this narrow sense, a mortgage is a security. The term now include stocks as well as bonds, notes, and other evidences of indebtedness.

**Seisin:** 1) Holding land under a claim of a freehold. 2) That which is owned. 3) The act of taking possession.

**Separate Property:** The property that one person owns free from any rights or control of others.

**Seriatim:** In succession.

**Settlement:** 1) The winding up and distribution of an estate by an executor or an administrator. 2) A property arrangement often involving a Trust. 2) Transfer of property to provide for the future needs of a person. 3) Property thus transferred.

**Settlement Options:** In life insurance, the choices the owner or the Beneficiary has about the method of payment of insurance benefits.

**Settlor:** A person who creates a Trust, such as a Living Trust, to become in force during his lifetime; also called Donor, Grantor, Creator, and Trustor.

**Short-Term Trust:** See **Clifford Trust**.

**Simple Trust:** A Trust that is required to distribute all of its income currently, does not pay principal, and makes no charitable distributions.

**Situs:** 1) The place where a thing is located. This can determine jurisdiction over it, or the right or power to tax it. 2) The place of performance of active duties of a Trustee. 3) The place where a Trust is created.

**Skilled Care for Purposes of Medicare Reimbursement:** This refers to both nursing home care and care for a homebound patient. The care must be by skilled professional doctors and nurses. Skilled care is ordered by a doctor. For a nursing home patient, the care must be of a type only the facility is able to give. Home care skilled services determinations are similar to those for nursing home determinations.

**Social Security Income (SSI):** Supplemental Security Income.

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**Special Administrator:** An administrator appointed by the court to take over and safeguard an estate awaiting an executor or administrator's appointment. This is sometimes known as a temporary administrator or a curator.

**Special Guardian:** A guardian appointed by the court for a particular purpose connected with the affairs of a minor or an incompetent; sometimes a guardian ad litem is known as a special guardian.

**Special-Use Valuation:** Under federal estate-tax law, the choice to value certain property at its current use value, rather than at fair market value. Also known as Special-Use Option.

**Specific Devise:** A gift, by Will, of a specific parcel of real property.

**Specific Legacy:** A gift, by Will, of a specific article of personal property.

**Specimen:** A sample or copy used to show what the original looks like.

**Spendthrift Clause:** A provision in a Trust or Will stating if a prospective Beneficiary has pledged to turn over a gift or distribution he or she hopes to receive to a third-party, the Trustee or executor cannot honor such a pledge. The purpose is to prevent a "spendthrift" Beneficiary from using a potential gift as security for credit on a speculative investment.

**Spendthrift Provision:** A provision in a Trust instrument limiting the right of the Beneficiary to dispose of his or her interest, as by assignment, and the right of the Beneficiary's creditors to reach it, as by attachment.

**Spendthrift Trust:** A Trust in which the interest of a Beneficiary cannot be assigned or disposed of by him or her or attached or otherwise reached by the Beneficiary's creditors.

**Split-Gift:** A gift in which the Donor's spouse elects to be treated as the donor of one half of the gift, this enables the use of the donor spouse's unified credit and annual gift tax exclusion. See IRC § 2513.

**Split Purchase:** An arrangement under which two siblings may buy property together, one buying a life interest and the other buying the remainder interest.

**Spousal Remainder Trust:** A Trust in which the Grantor gives an income interest to a named Beneficiary, with the remainder going to the Grantor spouse. This is to shift income for a short number of years.



## GLOSSARY

**Sprinkling Clause:** Discretion given to a Trustee to pay income, and sometimes principal, to any of several Beneficiaries, usually in any manner the Trustee considers proper. Such power must be provided for in the Trust agreement.

**Standby Durable Power of Attorney:** A power of attorney that comes into effect and gives the attorney-in-fact the power to act on a formal finding of the principal's (Grantor of the power's) incapacity. When the principal regains capacity, the power is suspended.

**Standby Trusts:** 1) Trusts in which individuals manage their own assets and only if a predetermined event occurs, such as incapacity, will another take over the management. On recovering from the incapacity, the individual may resume managing the assets. 2) Trusts turned over to a bank or corporation to manage the assets and increase them until a predetermined or an unforeseen event occurs. Then, the original Trustees take over the assets.

**Stare Decisis:** 1) To stand by that which is previously decided. This is the principal that precedent decisions are to be followed by the courts. 2) To continue or adhere to decided cases. It is a general maxim that when a point has been settled by decision, it forms a precedent which is not afterwards to be departed from. The doctrine of stare decisis is not always to be relied on, for the courts find it necessary to overrule cases which have been hastily decided, or contrary to principle. Many hundreds of such overruled cases may be found in the American and English books of reports.

**State:** A separate country, foreign, in reference to the federal government. Federal territories are not states. Washington, D.C. is a district, not a state, and is not under the U.S. Constitution.

**Statement:** 1) A declaration. 2) An oral or written presentation or report.

**Statute:** A statute is a formal, written law of a country or state, written and passed by its legislative authority, perhaps to then be signed by the highest executive in the government, and finally published. Typically, statutes command, forbid, or declare policy. Statutes are sometimes referred to as legislation or "black letter law." Published statutes are organized in topical arrangements called codes, such as the California Civil Code or the United States Code. The term is traditionally used for statutes of various organizations for organic laws (substitutes of constitutions) in various countries.

**Statute of Frauds:** A statute, first passed in England in 1676, designed to prevent fraudulent practices by requiring proof, usually in writing, of the important transactions of business, such as receipts. It declared: "No action shall be brought or that no contract



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shall be allowed to be good when the transaction is not so evidenced.” While each state has its own statute of frauds, designed to serve the same general purpose as the original statute, many of these statutes differ from the original statute.

**Statute of Limits:** A statute barring suits on valid claims after the end of a named period of time. The period varies for different kinds of claims. In most states, there is a 20-year limit on judgments; normally contract claims expire in six years; and claims for torts (injuries to people or property) expire within a shorter time. Each state has its own statute or statutes of limits.

**Statute of Uses:** An English statute passed in 1535 providing the legal as well as the beneficial title to land held for the use of a person vested in that person. There were certain exceptions to this vesting under the statute, which opened the way for developing the law of Trusts.

**Statute of Wills:** Statutes providing that no Will be valid, and no devise or bequest will be valid, unless the Will is in writing, signed, and witnessed in the manner provided by the statute.

**Statute of York:** First established in New York, these statutes put limits on the King’s powers. This, and the Magna Carta, were the roots of the idea we call “Constitutional Monarchy.”

**Statutes of Descent:** Laws, rules, or statutes governing the descent of real property under intestacy.

**Statutes of Distribution:** Laws, rules, or statutes governing delivering personal property under intestacy.

**Statutes of Mortmain:** Several early English statutes restricting alienating land to a corporation, particularly to an ecclesiastical corporation. Mortmain means “dead hand.” In the early English law, an ecclesiastic was believed civilly dead; therefore, the origin of the term “dead hand.”

**Statutory:** 1) A statute is a formal, written law of a country or state, written and passed by its legislative authority, perhaps then confirmed by the highest executive in the government, and finally published. Typically, statutes command, forbid, or declare policy. Statutes are sometimes referred to as legislation or “black letter law.” 2) In many countries, organized published statute arrangements are referred to as codes, such as the United States Code. In the United States, statutory law is distinguished from and subordinate to constitutional law.

## GLOSSARY

**Stipulate:** 1) A condition of agreement; required by contract. 2) To specify or arrange in an agreement: stipulate a date of payment and a price. 3) To guarantee or promise (something) in an agreement. 4) To make an express demand or provision in an agreement. 5) To form an agreement.

**Stock Bonus Trust:** A Trust set up by a corporation to enable its employees to receive benefits in the form of the corporation's stock as a reward for meritorious service or as a means of sharing in the profits of the enterprise. A common example is the employee stock ownership plan (ESOP).

**Stock Power:** A form of assignment signed by the owner of stock, which contains an irrevocable appointment of an attorney to make the transfer on the books of the corporation.

**Stock Purchase Trust:** An insurance Trust under which a surviving stockholder of a close corporation may purchase the stock of a deceased stockholder.

**Structure:** 1) The organization comprised of interrelated entities resulting in settling a financial and estate plan. 2) The format of a business or Trust setup.

**Subcontract:** A secondary and subordinate lease between the tenant of an original lease and a third-party.

**Subordinate:** 1) To make one subject to the orders of another. 2) To be inferior in position.

**Subpoena:** Under penalty. A formal order issued by a court demanding attendance in court. This is different from a Summons as there is not penalty attached to it.

**Subrogate:** To substitute one person in the place of another for a claim or right.

**Subscribe:** To sign. To write one's signature.

**Subscribing Witness:** One who sees a document signed OR hears that the signature is acknowledged by the signor, the witness signs his or her own name to the document, to be distinguished from an attesting witness.

**Substituted Trustee:** A Trustee appointed by the court, not named or provided for in the Trust instrument, to serve in the place of the original Trustee or a prior Trustee; to be distinguished from a Successor Trustee.

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**Succession:** The act or fact of a person's becoming entitled to property of a deceased person, whether by operation of law on the deceased's dying intestate or by taking property under the deceased's Will.

**Successive Beneficiaries:** 1) Beneficiaries who take one after another by succession. Thus, under a Will in which property is left to A for life, then to B for life, and then to C outright, A, B, and C are successive Beneficiaries. 2) Stands for inheriting property by descent or transmission to the next in a succession, from parent to child and so on down the direct line.

**Successor Trustee:** A Trustee following the original or a prior Trustee, as provided for in the Trust instrument; to be distinguished from a substitute Trustee.

**Summons:** A formal order issued by a court demanding attendance in court.

**Supplemental Security Income (SSI):** A federal income supplement program funded by general tax revenues (not Social Security taxes). Designed to help aged, blind, and disabled people, who have little or no income; and to provide cash to meet basic needs for food, clothing, and shelter.

**Surcharge:** An amount over the property value held by a fiduciary or more than the earnings of it forming a loss from the value of the property when originally gained by the fiduciary. If negligence or failure of duty can be proven, the Trustee is required by law to make good and replace the loss to the Beneficiary.

**Surety:** An individual or a company that, at the request of another, agrees to be responsible for performing some act in favor of a third person if the principal fails to perform as agreed.

**Surname:** Last name; family name.

**Surrender Clause:** A provision within an insurance contract outlining the methods by which the insurance rights can be surrendered or paid out, when any cash value is paid to the owner of the policy or the owner's designee.

**Surrogate:** A judicial officer, usually with local jurisdiction, who manages matters of probate and guardianship. Also known as judge of probate, register, judge of the orphan's court.

**Surrogate's Court:** See Probate Court.

**Swear:** To make a pledge solemnized by reference to a Supreme Being. Oath.

## J

**Tangible Property:** Property that can be touched or realized with the senses; opposed to Intangible Property.

**Tax Haven:** A place where certain taxes are levied at a low rate or not at all. This encourages wealthy individuals or firms to set up in areas otherwise overlooked. Different jurisdictions are havens for different tax types, and for different categories of people or companies.

**Tax Reform Act of 1986:** 1) An act that introduced sweeping changes in the tax laws. For pension plans, it substantially shortened the vesting schedule for employees' full participation in their plans. It also redefined the jurisdiction of the IRS and limited it. 2) The U.S. Congress passed the Tax Reform Act (TRA) of 1986, (Pub. L. 99-514, 100 Stat. 2085, October 22, 1986) to simplify the income tax code, broaden the tax base and remove many tax shelters and other preferences. Section 2(a) of the Act also officially changed the name of the Internal Revenue Code from the Internal Revenue Code of 1954 to the Internal Revenue Code of 1986. Although the Act made many amendments to the Code, it was not a substantial recodification or reorganization of the overall structure of the Code.

**Temporary (Emergency) Guardianship:** Used in cases where a disabled individual needs immediate medical treatment but is unable to give informed consent because of a life-threatening or severely disabling condition. The distinguishing feature of a temporary guardianship is that it gives medical providers the ability to get a court-appointed guardian quickly when an emergency arises calling for quick substituted decision making. Normal guardianship procedures are too extended to provide emergency guardian services.

**Temporary Administrator:** An individual or an institution appointed by a court to take over and safeguard an estate during a suit. This can be over an alleged Will, the right of appointment of an executor or administrator, or if probate is delayed for any reason, such as difficulty in finding or citing missing heirs.

**Tenancy:** Holding property by any form of title.

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**Tenancy at Sufferance:** A tenancy in which the tenant comes into possession of real property under a lawful title or interest and continues to hold the property even after his or her title or interest has ended because no one else claims it.

**Tenancy At Will:** Tenancy where a person holds or occupies real estate with the permission of the owner, for an unspecified term. A tenancy at will could occur when negotiating a lease, or under a valid oral lease or contract of sale. All the duties and obligations of a landlord-tenant relationship exist. Notice of termination is required by either party. The tenancy is not assignable.

**Tenancy by the Entirety:** Tenancy by a spouse, except in concert with the other; neither husband nor wife has a disposable interest in the property during the lifetime of the other. On the death of either, the property goes to the survivor; to be distinguished from joint tenancy and tenancy in common.

**Tenancy for Years:** A grant of use of property for a named period, such as according to Clifford Trust Rules, which require a period of use to be not less than 10 years and one day.

**Tenancy in Common:** A concurrent ownership of property whereby each party owns an undivided fractional interest in the property with no right of survivorship. The fractional interests need not be equal.

**Tenants in Common:** 1) An undivided interest in property held by two or more people in common. There is no right of survivorship. 2) An individual's interests passes to heirs, not to survivors.

**Tender:** 1) To offer. 2) The offer of money, property, or services.

**Tentative Trust:** A bank account or Trust funds deposited in the name of the depositor "in trust for" someone else. Since the money can be withdrawn, this is a Tentative Trust until the death of the depositor. Should the Beneficiary die before the depositor, the Trust reverts to the depositor's estate.

**Term Life Insurance:** An insurance policy issued by a title company for a determined term, usually 10 or 20 years.

**Term:** 1) The maximum time for which an elected or appointed office may be held without reelection or reappointment. 2) Specific details of the loan constitutes the terms of the agreement.

## GLOSSARY

**Testamentary Capacity:** The settling whether an individual has the legal capacity to sign a Testamentary instrument. Historically, an individual was considered competent to complete a Testamentary instrument provided he or she could recognize the natural object of his or her affection.

**Testamentary Trust:** Any Trust set up by a Will, Grantor or Living Trust which does not take effect until the death of the Grantor.

**Testate:** Having died leaving a Will.

**Testator:** A man who leaves a Will or testament in force at his death. *Intestate* means not leaving a Will, and without a Will.

**Testatrix:** A woman who leaves a Will or testament in force at her death. *Intestate* means not leaving a Will, and without a Will.

**Testify:** To give testimony under oath or affirmation in a legal proceeding.

**Testimony:** 1) Evidence given under oath or affirmation in a legal proceeding. 2) A solemn oral declaration usually given in response to questions.

**Title Insurance Policy:** An insurance policy issued by a title insurance company (insurer) who agrees to compensate the insured (usually a buyer of real estate) if information reported in a title search is false.

**Title:** Proof or evidence of ownership of property.

**To Wit:** That is to say; namely.

**Tort:** A wrongdoing.

**Trademark:** A distinctive letter, word, or mark used to identify and distinguish a particular service or product from many others offered.

**Transaction:** An act or exchange between two or more entities.

**Transcribe:** 1) To put in writing. 2) To make a copy that is readable of something dictated or recorded in shorthand.

**Transcript:** The writing resulting from the act of transcribing.

**Transfer:** 1) An act by which the property of one person is vested in another, whether by sale, gift, exchange, or otherwise. 2) A conveyance.

**Translate:** 1) To make a translation. 2) The transfer of property.

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**Translation:** A document containing a writing in one language and its interpretation in another language.

**Trotton Trust:** A Trust created when a Trustee deposits his funds into a Tentative Trust. The Trust is revocable until the depositor dies or completes the Trust by funding it. Should the named Beneficiary die before the funds in the Trust accede to him or her, an Absolute Trust is created. See **Henson Trust**.

**Trust:** 1) An independent entity, required to file a tax return. A Trust features a fiduciary relationship, in which one person (the Trustee) holds legal title to property (the Trust property), subject to an equitable duty to keep or use the property for the benefit of another (the Beneficiary). 2) A "Complex" Trust may gather and distribute income along with principal. 3) A "Simple" Trust is required to distribute all of its income within the tax year in which it is earned.

**Trust Administrator:** A person in the employ of a Trust institution handling Trust accounts in the sense of having direct contacts and dealings with Trust customers and Beneficiaries.

**Trust Agreement:** A written agreement setting forth the terms of a Trust.

**Trust Authority:** The legal right of a corporation to engage in Trust business.

**Trust by Order of Court:** A Trust created by an order of a competent court.

**Trust Capital Units (TCU):** The claim to a share of the corpus and profits, or income of the Trust, whenever payouts are granted. A Trust Certificate has on it the amount of TCUs given to the Exchanger for assets placed in Trust. TCUs can be given to those who have not exchanged assets as part of the original Trust agreement with the Trustees.

**Trust Charges:** The charges made by a Trust institution for its Trust and agency services.

**Trust Committee:** A committee of directors or officers or both of a Trust institution charged with general or specific duties about its Trust business.

**Trust Company:** A corporation or Trust, of which one stated objective is to engage in Trust business for both individuals and business organizations.

**Trust Corpus:** 1) The property held under a Trust. 2) The initial assets including property and funds placed into a Trust. 3) The Trust body.

## GLOSSARY

**Trust Costs:** The costs to a Trust institution of delivering Trust and agency services; opposed to Trust charges, which are the costs to Trust institution customers or Beneficiaries for Trust and agency services.

**Trust Deed:** See **Deed of Trust**.

**Trust Documents:** The fully written contract of the Trust, complete with names, terms, Minutes, letters of acceptance, and schedules of assets, Certificates, Register of Trust Capital Units or Units of Beneficial Interest, and any other pertinent documents concerning transfers and assets as necessary.

**Trust Estate:** All the property forming a particular Trust account, including asset lists.

**Trust for Support:** A Trust providing the Trustee applies only so much of the income or principal as in its judgment is necessary for the support or education of the Beneficiary.

**Trust Function:** A fiduciary capacity in which an individual or a Trust institution may act, such as executor, administrator, guardian, or Trustee.

**Trust Fund:** Technically, only money held in Trust; but often applied to all the property held in Trust. Also referred to as a Trust Estate.

**Trust Indenture:** Also known as a Declaration of Trust or Grant of Trust, the fundamental document codifying the Grantor's purpose in setting up the Trust. It defines the internal procedures, sets the limits about what the Trustees may and may not do, and provides permanent instructions for Trust administration, including disbursement protocols, investment preferences and priorities.

**Trust Institution:** A Trust company, state bank, national bank, or other corporation engaged in the Trust business under authority of law. It is a Trust institution if any department is engaged in Trust business, although other departments may be otherwise engaged.

**Trust Instrument:** Any writing, Will, Trust agreement, Declaration of Trust, Deed of Trust, or order of court creating a Trust.

**Trust Investment Committee:** A committee of directors or officers or both of a Trust institution charged with specific duties about Trust investments. A general Trust committee sometimes goes by this name also.



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**Trust Investments:** Where funds have been used to increase the cash flow of the Trust. The types of investments can be long-term, short-term, or through income producing property not limited to commercial or rental units.

**Trust Officer:** A title given to certain officers of a Trust institution.

**Trust Powers:** The powers granted to a Trustee in the Trust declaration or stated as a matter of Common-Law or by statute.

**Trust Receipt:** A formal receipt issued by a Trustee for property held in Trust; used in certain commercial transactions.

**Trust Under Agreement:** A Trust evidenced by an agreement between the Grantor and the Trustee; the same as a Trust inter vivos or Living Trust.

**Trust Under Decree:** A Trust shown by a decree of a court of equity.

**Trust Under Deed:** A Trust evidence by a deed of conveyance, as distinguished from an agreement; originally confined to real property but now often applied to personal property as well.

**Trust Under Will:** A Trust created by a valid Will to become effective only on the death of the Grantor; the same as a Testamentary Trust; opposed to a Living Trust.

**Trustee:** The person or entity appointed or elected to conserve, protect, and manage the assets or properties transferred to a Trust for a Beneficiary or Beneficiaries.

**Trustee Fees:** A Trust must have at least one Trustee to manage the assets in the Trust for the Beneficiaries. The fee arrangement includes a percentage of profits delivered to the Beneficiaries and can also include an annual fee as well as hourly fees.

**Trustor:** Same as Grantor, Donor, Settlor, or Creator, but it usually refers to one who sets up a Will.

**Try Title:** An action to quiet title lawsuit brought in a court having jurisdiction over land disputes, to show a party's title to real property against anyone and everyone, and thus "quiet" any challenges or claims to the title. This removes a cloud on the title so plaintiff and those associated may be free of claims against the property. Other names: Try title, trespass to try title, or Ejectment action to recover possession of land wrongfully occupied by a defendant. There are slight differences. An ejectment action is typically to remove a tenant or lessee in an eviction action, or an eviction after a foreclosure.

## GLOSSARY

**Tutor:** 1) Under civil law, one legally appointed to care for the person and the property of a minor; the equivalent of a guardian. 2) One who privately teaches certain subjects to pupils.

## U

**Ultimate Beneficiary:** A Beneficiary of a Trust entitled to receive the principal of the Trust property in final distribution; opposed to immediate Beneficiary and income Beneficiary.

**Unauthorized Investment:** A Trust investment not approved by the Trust instrument; to be distinguished from a nonlegal investment.

**Unbiased:** Impartial, without prejudice, neutral.

**Undivided Interest:** 1) Synonymous with undivided right. 2) A right or title, or a title to an undivided portion of an estate, owned by one or more tenants in common or joint tenants before partition. 3) The same title held by two or more people. The division does not need to be equal.

**Undue Influence:** The influence that one person exerts over another to the point where the second person is prevented from exercising his or her own free will.

**Unfunded Insurance Trust:** An insurance Trust in which the premiums on the policies are to be paid by the insured or by some third person and not by the Trustee; to be distinguished from a Funded Insurance Trust.

**Unfunded Life Insurance Trust:** A Life Insurance Trust that holds no significant assets other than a Life Insurance policy.

**Unified Estate and Gift Tax Credit:** A federal tax credit offsetting a gift tax and estate tax liability. The unified credit is \$192,800, from 1987, which is a mathematical equivalent to a \$600,000 exemption. The credit is applicable to taxes owed on transfers made during life and on death. Check with an accountant for current values.

**Unified Tax Schedule:** A single, progressive tax on the cumulative total of transfers made during life and on death. The schedule is designed to remove taxation of smaller estates and is the equivalent of exemption of the first \$600,000 of an estate's value from being taxed. Check with an accountant for current values.

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**Uniform Commercial Code (UCC):** A codification of commercial law, adopted in most states, that tries to make uniform all laws about commercial transactions, including chattel mortgages and bulk transfers.

**Uniform Durable Power of Attorney Act (UDPAA):** An act providing for creating a durable power attorney and standby durable powers, which are powers happening only when the Grantor becomes disabled.

**Uniform Gifts to Minors Act Custodian:** The person who holds property for a minor under the Uniform Gifts to Minors Act.

**Uniform Gifts to Minors Act (UGMA):** An uniform law adopted in every state, under which gifts of cash or securities and, sometimes, other types of property, may be given to a named custodian for a minor donee.

**Uniform Probate Code (UPC):** For guardianship, the UPC defines "incompetency" and governs certain acts of the guardians of incompetent wards. On gaining court approval, a guardian may engage in estate planning for the ward, but the UPC stipulates a guardian may not complete or change a ward's Will. It also contains terms for proper representation at an incompetency hearing.

**Uniform Simultaneous Death Act:** A uniform law adopted in every state creating a presumption of an order of death when it is impossible to settle which of two related people died first.

**Uniform Transfers to Minors Act:** A 1984 revision of the Uniform Gifts to Minors Act, under which different types of property may be the subject of gifts to minors through custodians and more types of transfers (by Trusts and estates) are permissible.

**Unincorporated Business Organization (UBO):** A Common-Law Trust where investors become Exchangers and receive Certificates of Trust on which a percentage of the Trust holdings are represented by Trust Capital Units. The initial funding from the Exchangers is deemed corpus. This arrangement is treated as a partnership by the IRS, unless some of the UBO holders have not added to the corpus, and thus are treated as Beneficiaries.

**United Funds:** Refers to setting up a fund in such a way the rights to the fund's corpus and earnings from it are divided into units, which its are owned by investors.

**United States:** 1) In reference to the IRC, the United States ...includes the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa. 26 CFR 170.59

## GLOSSARY

Meaning of Terms. 121(c)(2). 2) In reference to the U.S. Constitution, it is the states united by and under the Constitution. 3) The 48 continental states of North America plus Alaska and Hawaii are the states united. 4) A sovereign occupying the position analogous to that of other sovereigns in the family of nations. 5) The territory over which the sovereignty of the United States extends. See **United States of America**.

**United States of America:** A corporation formed February 21, 1871 by an act of Congress. The United States of America is limited to the District of Columbia. It claims to manage the several (50) states. The identification of the United States of America and the United States are often used interchangeably, as the Constitution, a Trust, identifies the collection of states in 1789, as The Constitution **for** the United States of America, while the United States **of** America, is a contract between the officers of government and the beneficiaries of the Trust who are the People.

**Units of Beneficial Interest (UBI):** The legal claim to a share of Trust profits, or income, not corpus, of the Trust, when payouts are determined by the Trustees. Each UBI holder's units are assigned by the Board of Trustees in consultation with the Grantor or other Exchangers. The number of units given appear on the Certificate for Beneficial Units the UBI holder receives.

**Unlimited Marital Deduction:** A 100 percent deduction for gifts on death to a spouse. This deduction allows a married decedent to avoid federal estate taxes at death. Transferred gifts must be included in the decedent's gross estate.

**Use:** The beneficial ownership of property, the legal title to which is in another; the forerunner of the present-day Trust.

## V

**Vacate:** 1) To resign from an office or appointment. 2) To move one's office out of the area (jurisdiction) within which one is allowed or permitted to perform duties connected with an appointment or office. 3) To leave. 4) To rescind a court order.

**Valid:** Legally binding. In effect.

**Valuation Date:** For federal estate tax purposes, the value of estate property is held to be its fair market value on the date of the decedent's death or six months after the date of death. The determination is the responsibility of the legal representative.

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**Vendee:** Purchaser, buyer.

**Vendor:** Seller.

**Venue:** 1) Neighborhood 2) The area (usually defined as a county or parish) in which an action occurs resulting in legal proceedings. 3) The area from which a jury may be drawn and where the trial is held.

**Verbal:** Spoken, audible, oral.

**Verification:** 1) A certified copy. 2) A certificate of acknowledgment. 3) An oath or affirmation administered by an official to an affiant.

**Versus (vs. or v.):** Against.

**Vest:** To confer an immediate, fixed right of immediate or future possession and enjoyment of property.

**Vested Interest:** An immediate, fixed interest in real or personal property, although the right of possession and enjoyment may be postponed until some future date or until the happening of some event; to be distinguished from a contingent interest.

**Vested Remainder:** A fixed interest in property with the right of possession and enjoyment postponed until ending the prior estate; to be distinguished from a contingent interest.

**Void:** Canceled, of no legal force or effect, useless. A voided contract or Trust means it is no longer in effect or valid.

**Voidable:** Capable of being made void.

**Voluntary Act:** An act done intentionally and willingly. Not forced or unduly influenced.

**Voluntary Trust:** A Trust created by the voluntary act of the Grantor and not conditioned on his or her death; the same as a Living Trust; to be distinguished from a Trust under Will or Testamentary Trust.

# W

**Waive:** To surrender, let go or give up voluntarily.

**Waiver:** The voluntary surrender or refusal to accept a right. In practice, everyone is required to take advantage of personal rights at the proper time, and neglecting to do so, is a waiver. If, for example, a defendant misnamed in the writ and declaration, pleads over, that defendant cannot afterwards take advantage of the error by pleading in abatement, for that plea amounts to a waiver. In contracts, if, after knowledge of a supposed fraud, surprise or mistake, a party performing the agreement in part, waives the objection. It is a rule of the civil law, consonant with reason, that anyone may renounce or waive a favor. The instrument evidencing the act is also known as a waiver.

**Ward:** A person who, because of minority, mental incompetence, or other incapacity, is protected by the court, either directly or through a guardian, committee, curator, or conservator. A person for whom a guardianship or conservatorship is set up.

**Warrant:** To guarantee.

**Warranty:** A guarantee given by a grantor to the grantee stating the grantor will be responsible to the grantee if certain facts are not true or certain events do not occur.

**Warranty Deed:** A legal instrument by which one transfers all right, title, and interest in real estate to another, and at the same time makes certain legally enforceable guarantees, including the fact of full title to the property, and the right to convey the property.

**Waste:** Spoil or destruction of real property done or allowed by the tenant in possession to the prejudice of the heir or owner of the remainder or reversion.

**Wasting Assets:** Economic process by which a weakening causes the future economic benefit of an asset to "waste" away, such as a gold mine in which the gold is being extracted, thus making the mine to waste away. Or having a new car sit out in the elements to rust.

**Wasting Trust:** A Trust composed of property gradually being used up, such as an oil well.

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**Whole Life Insurance:** A life insurance whereby part of the premium is invested, and the principal and earnings on these investments are used to defray part of the cost of future premiums.

**Widow's Allowance:** An act by a court or statute releasing a portion of an estate to the widow for her immediate needs after the death of her husband.

**Widow's Election:** See **Election Against the Will**.

**Will:** A legally enforceable declaration of a person's wishes about matters to be attended to after his or her death and inoperative until his or her death. A Will usually, but not always, relates to the Grantor's property, is revocable or amendable by a supplement up to the time of the person's death, and is applicable to the situation existing at the time of his or her death.

**Willful:** Intentional, deliberate.

**Witness:** 1) A person who sees an event. 2) A person who gives testimony under oath concerning an event observed.

**Writ:** An order or compulsory direction in writing, under seal, issued in the name of a state or of a court or of a judicial officer, and commanding the person to whom it is addressed to do or not do some named act.

*XYZ*

**Yield:** 1) Services performed by the tenant to his lord. In feudal times and later, the words "yielding" and "paying" often began property lease contracts. 2) In patent claims the word "yielding" is applied to the part retractable at will. 3) An investment yields funds returned. For example, an investment of \$10,000.00 at 5% interest yields \$500 a year.

## Appendix

### Introduction

The best way to explain how to put together a Trust is to draw a picture, give examples, and share the documents we use. Unfortunately, there is not enough room to share all the documents, so we selected those most pertinent and critical so you can “get the picture.”

Most of this information is designed for a Common-Law Trust. In Volume I, we said that all Trusts devolved from the original Common-Law Trust. Therefore, those who prefer the Statutory Trust can borrow from these formats if they suit the applications needed.

Further, because we are not licensed attorneys we cannot tell you how to put together your Trust. We can only give you enough information so you can find the missing pieces. **Do not** attempt to put together any kind of Trust without consulting with those who have experience.

We provide in the back of Volume II a telephone number to call to find people who can help you if you chose to put together a Common-Law Trust. For Statutory Trusts, check with your local referral service if you do not know an attorney who can help you.

### Layout

There are 46 Sample Layouts. These are documents to copy and edit to suit your own needs. They have been accumulated from a variety of Trusts and Trust situations. Where all of a sample could be put on a page, we did so.

There are 12 Presentations. These are legal discourses about various Trust matters, each one unique, to add to your growing knowledge of Trust protocols.

### Trust Book Sections

The Sample Formats belong to sections of a completed Trust book. We have divided them as shown.



## **Art of Passing the Buck, Volume II**

- I. Trust Indenture
- II. Initial Funding
- III. Acceptances and Resignations
- IV. Minutes
- V. Manager's Report
- VI. Banking Documents
- VII. Contracts
- VIII. Proposals, Transfers and Exchanges
- IX. Legal References and Information
- X. Organizational Charts and Trust Address and Telephone Directory
- XI. Asset and Inventory Lists
- XII. Certificates and Registers
- XIII. Tax Information
- XIV. Miscellaneous Documents
- XV. Stationery

We provide samples for all but X, XIV, and XV in the Appendix.

There are hidden secrets, golden nuggets of information, and techniques shared in the Appendix, providing you can notice them and utilize them.

### **How To Know What Information Is Needed**

"Prepare for the worst, hope for the best." As you will see in Appendix M, the more money, the more likely the dispute. Muddled thinking and lack of clarity seemed to have been the cause of the battle over what the father left to his two sons.

In Appendix M, you will find what "prepare for the worst" means. Although, this is far from some of the court battles, it is sufficient to make the point. If a Beneficiary feels cheated, he or she is likely to cost the Trust oodles of money. Is it worth it? The cost is paid by the other Beneficiaries. So, before anyone is diminished or left out, think over seriously before actions are taken. You may be gone, but everyone else has to handle what you left behind.

### **Opposition**

Think in terms of the opposing attorney. You sit on the witness stand, the Trust documents are strewn all over his table. He stands there and asks you, "What does this mean, and why did you say it this way? Five million dollars is at stake. Will you be able to say, "I think it is fairly clear. Let me see that and I will explain it to you." How embarrassed would you like the attorney to be?

Better yet, let the documents testify for the Trust, in all cases. Make sure the "other," whomever that may be, has no questions and you can present ample proof.

This is nearly an impossible task. So, when the documents are not perfect, forgive yourself and know you did the best you could.

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## Appendix A

### **Trust Indenture Excerpts**

This Appendix addresses various parts of the Trust Indenture. They are the most uncommon subjects of Trust Indentures in general. You might refer to them as the great mysteries of Common-Law Trusts. If applicable, add some of these samples to your Statutory Trusts.

#### **Sample Excerpts**

When setting up an Irrevocable Trust, the Grantor meets with those people who have experience in writing Trust documents. There are usually many questions asked the Grantor, and the answers become incorporated into the draft. Because these excerpt samples are offered, you may want to use some of these ideas in your own Indenture.

The samples provided are not complete because they are out of context from the entire Trust Indenture you would put together. Refine and edit these excerpts as you wish.

Use these samples to bring clarity to your own Indenture. We hope that by thinking about the implications, you will broaden your understanding of the impact of your decisions on the future generations.

#### **Number of Trust Capital Units**

The Indenture states the number of TCUs. For larger Trusts, it generally starts with 500 ranging up to 5,000. For the Asset Holding Trusts, they generally start with 100 or 200. The more initial Beneficiaries, though, the more TCUs.

#### **Number of Units of Beneficial Interest**

Although the TCUs can be placed at any number, the Units of Beneficial Interest become unruly beyond 100. Think of a future time, where there are many Beneficiaries, and their management. We recommend creating only 100 Units for UBI holders, and not dividing them.

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### Sample Format 1 - Trust Capital Units

This format came from a Trust Indenture currently in use. We edited it to comply with the Allen-Jay Family Trust, and have changed some of the wording.

We selected this excerpt because the information is mostly unknown. When reviewing scam Trust court cases, we find this area is the most misunderstood.

By studying the wording, it gives you an overview of the long-range impact of how you write your Indenture. If you decide to use this Trust type, edit this to suit your own needs.

#### Future Power of your Progeny

View TCUs as the core of your Common-Law Trust. Here, you not only set up the future power of your progeny, but you provide incentives for participation. Those holding these units share in the profits, and unfortunately will feel any financial losses, too. If they complain, let them join in so they can see what they could have done to help, or see what events occurred to reduce their distribution and how it happened.



#### I. Inheritance of Trust Capital Units

##### A. Trust Certificate<sup>135</sup>

1. The Certificate shows the number of TCUs for the Holder.
2. Change the number of TCUs for each Certificate as requested by the Certificate Holder, subject to the approval of the Board of Trustees.
3. All references to Certificates include the number of Units shown, and the right of the Holder to seek a change of Units by:
  - a. Dividing them into smaller units
  - b. Asking to transfer them to another person.

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<sup>135</sup>

Reproduction of a Trust Certificate indicating the number of Trust Capital Units is found in Appendix K.

## APPENDIX A

- c. Or for other unforeseen reasons.
- B. TCUs belong solely to the Trust Capital Unit Holder and not to the marriage partner.
- C. Legal Heirs
  - 1. Direct Descendants
    - a. TCUs pass first to direct descendants (issue of the body) of Joseph Allen and I, Sandra Jay Allen.
    - b. The direct Descendants collectively hold more TCUs than other Legal Heirs, and other non-descendants or organizations except Trust Officers.
    - c. If any direct descendants do not wish to accept distribution, or do not have children, their portion passes to Legal Heirs described in paragraph I.C.2.
  - 2. If all direct descendants do not wish to accept distribution, or do not have children, then the TCUs pass to:
    - a. Janelle J. Kerr, the firstborn of Dorothy Jay Kerr, Joseph Allen's oldest sister
    - b. Heather Munion, the firstborn of Theresa Allen Munion, Sandra Jay Allen's sister.
  - 3. Also qualified to receive TCUs are the descendants of those named in I.C.2.
  - 4. Legally adopted children of Legal Heirs may qualify to hold TCUs after meeting the following criteria:
    - a. Children adopted for no fewer than ten years.
    - b. Both parents take part in the marriage and provide emotional support for the family for no fewer than ten years.
    - c. Parents shared actively in the adopted children's life for a minimum of ten consecutive years.

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- D. Any Trust Capital Unit Holders who are not Legal Heirs cannot pass their Trust Certificates to their heirs, Beneficiaries, or direct descendants. Nondescendants return Trust Certificates to the Board of Trustees which then reissues them at its discretion, preferring Legal Heirs.
- E. The Board of Trustees approves those who are not Legal Heirs before they can exchange assets for TCUs. If they become Trust Officers, they can hold TCUs for their positions.
- F. When there are no direct descendants, Trust Certificates can be issued to those named in I.C.2. to 4. and to others qualified based on merit or need. Use the following guidelines:
  - 1. Ability to contribute to this Trust through business insight, legal or financial support, or through creating an asset where the funds accrue to the Beneficiaries of this Trust.
  - 2. Special needs requiring financial support, such as conditions of poverty, weakening health, or allowing a gifted child to achieve his or her full potential.
  - 3. Organizations supporting charitable endeavors as described in Section XX (of your Trust Indenture).

### **II. Active and Inactive TCUs for Trustees**

- A. The Trustees have a vested interest through holding TCUs. Initially, the TCUs are inactive, other than a legal claim to Corpus. As time passes, the Trustees as Trust Certificate Holders, may add funds to the Trust to join pooled investments and thus activate some of the TCUs per agreement of the Board of Trustees. This allows the Trustees to receive distribution, by the arrangement with the Board of Trustees.
- B. If a Trustee receives TCUs as Trustee, and then exchanges property into the Trust (as opposed to investing funds), the Trustee now owns two separate Certificates, one as Trustee, and one as an Exchanger. This applies to all Officers.
- C. A portion of the TCUs of Trustees may also activate after three years or greater for devoted and Trustworthy service, at the discre-

## APPENDIX A

tion of the Board of Trustees or by the Grantor under his or her Retained Powers to decide distribution.

- D. Trustees and Officers surrender inactive TCUs, representing their portions as stewards of this Trust, at closure of their responsibilities.
- E. TCUs given for exchange of property into the Trust remain with the Trustee, providing the Trustee supports Trust principles and follows instructions in this Indenture.

### III. Transfer of TCUs

- A. The lawful Certificate Holder, as recorded in the records on the Trust Certificate Register, may, in writing, surrender to the Board of Trustees all claim to such. The Board considers suggestions made by the previous Holder to reissue these Certificates.
- B. No transfer is effective until approved by the Board of Trustees. Transfer becomes effective after surrender of previously held Certificates to the Board.
- C. Declare previously issued Certificates, not currently held, void through a Board of Trustees Meeting.
- D. Note all transfers on the Trust Certificate Register.
- E. Nonlegal Heirs
  - 1. Legal Heirs may file a request to transfer Certificates with the Board of Trustees naming anyone they wish to have Certificates when the Certificate Holder dies.
  - 2. No more than fifteen percent of a Legal Heir's Certificates may pass to other than those qualifying as Legal Heirs.
  - 3. The named person to receive Certificates does not need to be a Legal Heir, but cannot then pass Certificate or Certificates received on to his or her heirs. They first must be surrendered only to the Board of Trustees who then passes them on to others at their discretion, in according with the Trust Indenture.



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- F. When a Certificate Holder dies and there are transfer instructions in the Minutes:
  - 1. Reissue the Certificates after receipt of official notice of the death.
  - 2. If previously held Certificates have not been returned to the Board of Trustees, void them at the next Board of Trustees Meeting.
  - 3. Note the transfer on the Certificate Register.
  - 4. If no approval to transfer Certificates appears in Minutes, the Board transfers such TCUs, proportionally, to the remaining Legal Heirs.
- G. When there are no remaining Legal Heirs alive, issue the TCUs to no fewer than three charitable organizations as described in Section XX (of your Trust Indenture).

## **Sample Format 2 - Alternate No Heirs**

This excerpt came from a different Trust where the Grantor did not believe any of his children would have children.

### **Juvenile Delinquent**

Having been a juvenile delinquent, he always wanted to help those less fortunate. He wrote this into this Indenture.

This gives you a direct sense of one who has been involved in crime, and who has chosen to do better for himself.

Use this by replacing his particular charitable sense with your own. Perhaps your concern is with the starving children in India, or with supporting gifted children.

We hope this inspires you, because even if your family has grown over two generations, before your Trust becomes richly funded, these instructions in your Trust give direction about what to do with excess funds.

### **Charitable Donations**

We have included at the end of Appendix A the beginning of a Charitable Trust Indenture. It is separate from the Indenture dedicated to your family. Also, as part of your Family Trust Indenture, there can be another section where you address what to do with funds after they reach a particular cash flow. For example, if the Trust earns more than \$200,000.00 a year, you may want to direct the Board of Trustees to give ten percent of it to specific charities. In the charity section of your Family Trust you can go into detail regarding who is or is not qualified to receive your bequest.



1. If there are no direct descendants, issue TCUs based on merit or need to organizations supporting first-time offenders. First-time offenders are juveniles and adolescents coming from dysfunctional homes, or those who have committed nonviolent crimes.
2. Disqualified from this definition are:

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- a. Drug dealers, repeat offenders, murders, arsonists, hijackers, or those who commit acts of piracy.
  - b. Those who cause bodily harm.
  - c. Criminals who use a gun, whether loaded or not, a knife, or any other like weapon.
3. Support the first-time offenders to integrate them successfully into society to become productive and contributing members. This includes educational opportunities, health-care, mentoring, and other creative participation.
4. Specific organizations now qualified are:
  - a. List A
  - b. List B

### Sample Format 3 - Protector

This sample is an evolution taken from various legal documents and hard-core experience. Although not perfect yet, and maybe it will never be, here is information never offered openly in this format.

#### What Could Go Wrong

After reviewing several Indentures, this combination of information proved to be the most thorough. It gives you a perspective of possibilities of what could go wrong. From the Grantor left "holding the bag," to the errant Trustee, we feel we supply broad strokes to incorporate in your own Indenture.

#### *Protector Selection*

This information is applicable to both a Private and a Statutory Trust, and may just save the day if your Trust runs into either internal or external troubles. When drafting an Indenture, use this as a guideline of how to select a Protector, and who you want to watch over your Trust without burdening that person with all the details. Specifically, what qualifications would your Protector need to effectively interface with your Beneficiaries?

We hope that reading through this gives you a deeper understanding of this little-known area of Trusts.



- I. Protector
  - a. The Protector supports and ensures mediation and arbitration as described in Section 12, 13 and 14 and sees to satisfying both parties.
  - b. The Protector secures and protects the present and contingent distribution rights of the Trust Certificate Holders. This includes:
    - i. The overall legal status and holding of Trust property.
    - ii. Protecting the Trust from any actions by its fiduciaries which could be harmful or destructive to the Trust Estate.
    - iii. Actions which might bring discredit on the Trust Group.

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- c. The Protector cannot be subservient or subordinate to any Trustee or family member of the Trustees.
- d. The Protector can advise the Board of Trustees, should the Trustees so wish.
- e. The Protector receives at least one Trust Capital Unit or one percent as agreed between the Grantor and the Protector.
- f. The Protector signs a separate agreement that becomes part of this Declaration of Contract and Trust Indenture when he or she accepts the position with this Trust.
- g. Appointments
  - i. The Grantor appoints the first Protector.
  - ii. The Grantor has the right to choose a succession of at least two Protectors to be on file within the Minutes of this Trust.
  - iii. The Grantor reserves the right to set up instructions and standards for choosing succeeding Protectors. The details will be in the Minutes.
- h. Powers of the Protector
  - i. The Protector has the right and the authority, on due cause, in his or her sole discretion, to dismiss a Trustee on written notice, delivery by Certified Mail to said Trustee's address. Due cause can be, for violation or lack of fulfillment of the Indenture, and for behavior which causes dishonor to the Trust.
  - ii. The right to change characteristics of the Trust to avoid exposure of the assets to risk. This includes a change of Trustee, situs or country.
  - iii. The right to increase or decrease Trustees' fees, salaries, wages, and distribution percentages to ensure they are in alignment with cash flow to protect the corpus of the Trust for the Beneficiaries.

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- iv. The right to ask for an audit of the Trust to help, teach and develop better protocols to protect the assets, or as part of an investigation into a Trustee's conduct.
- i. Limits
  - i. The Protector is not a member of the Board of Trustees.
  - ii. The Protector cannot be a Beneficiary, nor can his or her spouse, children, sons or daughters-in-law, mother, father, or brothers and sisters, or anyone to whom the Protector may be loyal.
- j. Removal of a Protector
  - i. The Grantor keeps the right to fire or hire the Protector at his or her own discretion.
  - ii. The Board of Trustees has the authority to replace a Protector on death or resignation, only if the Grantor is unavailable to choose another.
  - iii. If the removal of the Protector is for medical reasons, the Board of Trustees has the power to demand the Protector gets a certification of competency to continue to serve in the role of Protector. Failure to produce the necessary medical certification within a reasonable, named time, is an automatic resignation.
  - iv. Removal of a Protector can be by:
    - (1) The Grantor with or without cause.
    - (2) More than two-thirds of the Certificate Holders based on the TCUs held.
    - (3) The Board of Trustees, based on satisfactory and enough evidence of unfit or irresponsible behavior, such as:
      - (a) Drug or alcohol addiction.
      - (b) An illness which prevents the Protector from functioning.

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- v. All procedures to remove a Protector are confidential.
- vi. The Minutes of this Trust documents the Protector removal proceedings.
- k. Removal of a Trustee
  - i. Keep the removal of a Trustee confidential if the Trustee so removed wishes the matter kept so. The Trustee should so express this wish to the Protector or the Board of Trustees.
  - ii. Before dismissing a Trustee for medical reasons, the Protector can insist the Trustee gets a certification from, at least, one doctor stating he or she is fit to serve as a Trustee. Any refusal to provide the proper documentation within a named period of time, not to exceed Twenty (20) days, is a resignation.
  - iii. The Board of Trustees has the authority to replace a Protector on death or resignation—only if the Grantor is unavailable to choose another.
- l. Grantor's Power to Remove a Trustee
  - i. Only if the Protector does not perform his or her duties, in response to the request of the Trust Certificate Holders or Beneficiaries, will the Grantor help with the removal of a Trustee.
  - ii. The Grantor enters with others to remove a Trustee for just cause, and under the guidelines set forth within this Trust Instrument.
  - iii. The Grantor holds the power to remove a Trustee for violation of the Indenture if there is enough documentation to show the following additional circumstances also exist:
    - (1) The Protector is nonresponsive or there is no Protector.
    - (2) To prevent the Trust from needing a court-appointed Trustee.

## APPENDIX A

- (3) To save the assets from compromise or threat of legal entanglement if the current Trustee remains.
- iv. The Grantor becomes involved in removing a Trustee, if there is no other Trustee, or the current remaining Trustee is unresponsive or part of the trouble. The Grantor may, then, appoint a new Trustee with the approval of no less than one-third of the Trust Certificate Holders, based on the number of TCUs each holds. Two-thirds must approve if any of the Trust Certificate Holders oppose appointing the new Trustee.
- m. **Counseling Trust Members**

The Protector is the natural counselor and mediator should any disputes arise between the members of the Trust.
- n. **Investigation of Trustee Activities**
  - i. Inform the Protector by giving him or her copies of relevant or periodic Minutes.
  - ii. Any Trust Certificate Holder or Beneficiary may ask for an investigation into a Trustee's conduct and behavior only as it relates to the Trust. The Protector may ask support from the Certificate Holders in examining any of the Trustee's activities.
  - iii. He or she may ask the Board of Trustees and other suitable advisers to review circumstances and evidence, or to report to him or her any events about the investigation.
  - iv. The Protector can receive any information or documentation of any transaction, correspondence, or any other dealings of the Trust.

### **Sample Format 4 - Resignations**

After reviewing many Trust Indentures, we have found, in general, the protocols for resignations often are less than satisfactory to the moment. A resignation is uneasy, even if it is voluntary and there are no loose ends to financial matters. For an examples see the Resignation Letters, Sample Formats 15 and 16.



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### **Time for Transition**

The transition from one Trustee mandates updating many financial and banking documents and often can take weeks to make a full change. Couple this with other Board of Trustee members' getting to know the new Trustee, and there are likely glitches.

This particular excerpt was chosen because it seems thorough; not that it covers every detail, but it provides solid information about what to do. After all, an Indenture records the Grantor's wishes, and here, they seem clear.

### **Financial Responsibility**

When a person who has financial responsibility leaves a Trust, many details often need to be wrapped up. In this format, several steps are given to assure the Board of Trustees that matters have been properly handled.

The ideal is for the resigning Trustee to take the new Trustee to the bank before departing. The friendly introduction to whomever the parting Trustee most often deals assures the bank of the solidity and formality of the Trust group. Giving a copy of his or her resignation directly to the bank personnel assuages any uncertainties.

You will be surprised how many times you need to copy the resignation to prove the overlapping dates and timeliness of the replacement of Trustees.



#### **1. Trustee Resignation**

- a. Any Trustee, Cotrustee, or Successor Trustee may resign without permission of the court, and without prior judicial accounting, unless the Board of Trustees demands the accounting.
- b. The resigning Trustee gives either a verbal or written status of his or her Trustee duties so the Trust may carry on without undue interruption.
- c. The resigning Trustee must present a letter of resignation including:
  - i. To whom the notice is addressed.
  - ii. The name of the Trust.
  - iii. The resigning Trustee's position.

## APPENDIX A

- iv. Any specific reason for the resignation.
  - v. Acknowledgment of a successor's taking his or her place.
  - vi. Information how to reach the resigning Trustee.
  - vii. The date of resignation, not fewer than ten days after giving such notice, when such resignation becomes effective.
  - viii. If the Trustee signs financial documents, instruments and banking papers, then notarize the resignation, although the banks may or may not need it, as they have the resigning officer's signature on file.
  - ix. If the Trustee does not sign financial documents, the receipt by the Executive Secretary is enough.
  - x. The Board of Trustees can refuse to accept the resignation for specific reasons listed within Board of Trustees Minutes or by a formal letter to the resigning Trustee.
- d. The resigning Trustee delivers the notarized resignation to at least one other Trustee or the Executive Secretary. Either the Trustee or Executive Secretary signs an acknowledgment of receipt.
  - e. The resigning Trustee or Cotrustee remains liable until the delivery of the status report and the accounting, if so requested by the Board of Trustees, and acceptance of the resignation.
  - f. Keep the letter of resignation in the Trust records. Trustees may show the resignation to confirm to third parties who have a valid need to know the status of the current Trustees.
  - g. If a Trustee leaves without a letter of resignation, then enter the last date of performance by the Trustee into the Minutes. One of the Officers writes a statement of resignation for the Trust Protector to sign and get notarized. Without the letter of resignation, though, the Trustee remains liable until the Trust Protector signs the resignation.

## Art of Passing the Buck, Volume II

### Sample Format 5 - Charitable Trust Indenture

In researching how to put together a Charitable Trust Indenture, we discovered this one. We chose to add it because it seems both simple and clear. Further, we discovered it is in full use, and there is no misunderstanding with the Board of Trustees and the Grantor concerning the assignment of distribution.

#### 501(c)(3) Application

This sample gives you a format about setting up a Charitable Private Trust. For this Trust to receive funds, it needs to have an Employer Identification Number (EIN), and to qualify as a 501(c)(3) organization with the Internal Revenue Service. If this Trust creates its own funds and only distributes them, then it does not need to qualify as a charitable organization with the Internal Revenue Service.

By using a Trust of this nature, it brings satisfaction to those who have ample funds. They know they contribute to the welfare of those who are in need. The Grantor of the Trust we used for this sample format is pleased with the positive effect on the lives of many people.



I, Sandra Jay Allen, Grantor of this Charitable Trust, do declare and announce that I intend to create and do create a Charitable Trust. I sanction the Trustees of it to act under the name as shown above and as named on page 2, Name and Date of Creation.

The Grantor declares and settles a Charitable Trust for the various organizations as listed on appropriate schedules and specifically in support of the Baptist Church and the Christian Faith.

Be it known that creating this Charitable Trust is after satisfying the needs of my immediate family.

The sole purpose and motive for setting up this Charitable Trust are to provide for the less fortunate. It is my goal to raise their standards through granting financial support to Baptist schools, agencies and societies set up for charitable purposes.

Although the priority is to the Baptist organizations as listed, all other Christian-based organizations may also receive aid and support: hospitals, churches, educational institutions to improve the mind and to spread positive, life-supporting knowledge and culture.

## APPENDIX A

It is not the wish of the Grantor to ignore human suffering; therefore, support those of any faith through the following means, providing there are enough Trust funds, and the needs of the family are satisfied:

- Applications and methods to cure disease and promote health.
- Alleviation of suffering from physical or mental disabilities.
- Aid and support of the poor and less fortunate.



## Art of Passing the Buck, Volume II

## Appendix B

### **Loading the Trust**

This section applies to both Irrevocable and Statutory Trusts. The funds initially put into the Trust fix the baseline of the Trust value. This is the starting point, known as original corpus. When put into financial instruments under the Trust name, corpus is referred to as principal. From this point, the Settlor decides whether income is applied to corpus or profit.

### **Trust Value**

In our Allen-Jay Family Trust Sample Format 6, the first funding totals nearly \$800,000.00. As the years pass, the value of the Trust varies in reference to this number. When the Trust value falls below \$800,000.00, all income-producing funds are first applied to principal, and then to income.

Long-term or short-term capital gains are based on the original corpus at the time of its sale.

In a Trust, this baseline value is where the Grantor's retained power to decide corpus and income begins.



### **Sample Format 6 - Initial Funding**

We formatted this Initial Funding Schedule after reviewing several different Trusts.

### **Supporting Exhibits**

When your Trust is assembled, keep the initial funding supporting exhibits in the same section of the Trust Book with the Schedule of Initial Funding. You will need to refer to them from time to time.

## **Art of Passing the Buck, Volume II**

### **Accounting Format**

The Sample Format 8, Exhibit C, gives the details of the Life Insurance and Stock Portfolio placed into the Allen-Jay Family Trust by Sandra J. Allen.

When setting up the Trust accounting, these asset values are shown on the Balance Sheet, or listed as part of the Trust accounting schedules depending on the accounting format chosen by the Trustees.



APPENDIX B

**Allen-Jay Family Trust**

**Schedule of Initial Funding**

**August 31, 2004**

<b>Quantity</b>	<b>Description</b>	<b>Price Each</b>	<b>\$ Amount</b>
1	Document Creation of Trust - Joseph Allen	\$ 8,400.00	\$ 8,400.00
1	Initial Corpus - Sandra Jay Allen	\$ 30,000.00	\$ 30,000.00
1	Exhibit A, Promissory Notes - Sandra Jay Allen	\$ 50,000.00	\$ 50,000.00
1	Exhibit B, Oppenheimer Mutual Funds - Joseph Allen	\$ 200,000.00	\$ 200,000.00
1	Exhibit C, Life Insurance and Stock Portfolio - Sandra Jay Allen	\$ 500,000.00	\$ 500,000.00
1	Office Supplies and Furniture - Joseph Allen	\$ 700.00	\$ 700.00
		\$ 789,100.00	\$ 789,100.00

Received by:

Karen Rosencroft, Trustee

August 31, 2004



## **Art of Passing the Buck, Volume II**

### **Sample Format 7 - Rental Income**

For this sample we use a different Trust. The name of it is not given, and the Schedule of Initial Funding is not shown here.

#### **Supporting Exhibit**

Funds shown on Exhibit B 1 - Rental Income accrue to the Management Trust. We include this exhibit as a suggested format of how to list rental income as part of the initial corpus and cash flow into the Trust.

Castina Property manages the rental units, and sends the monthly check of \$5,940.00 to the Management Trust. The properties showing on Exhibit B 2 each belong to a different Asset Holding Trust.

Often, rental property and commercially leased property are the most profitable sources of cash flow to a Trust.



## APPENDIX B

### Exhibit B 1 - Rental Income

Exchanger: Theresa J. Braddon

<b>Property Managed By</b>	Castina Property		
<b>Address</b>	16154 West Highland, Phoenix, AZ 86336		
<b>No. of Units</b>	4	<b>Monthly Total</b>	\$ 6,600.00
<b>Minus Management Fees</b>			\$ 660.00
<b>Total</b>			\$ 5,940.00
<b>Current Status</b>	All units rented		

### Exhibit B 2 - Rental Property

<b>Addresses of Units</b>	<b>Date when Lease Ends</b>	<b>No. of Units</b>	<b>Rented ✓</b>	<b>Monthly Rent</b>	<b>Total</b>
28 Camelback Road, Phoenix, AZ 84336	Sept. 30, 2005	2	✓	\$ 1,650.00	\$ 3,300.00
48 Camelback Road, Phoenix, AZ 84336	38502	1	✓	\$ 1,650.00	\$ 1,650.00
48 Camelback Road, Phoenix, AZ 84336	Nov. 30, 2005	1	✓	\$ 1,650.00	\$ 1,650.00
					\$ 6,600.00



### Sample Format 8 - Life Insurance and Stock Portfolios

We took the information given in the Trust Structuring chapter to create Sample Format 6 - Initial Funding. Exhibit C is part of the supporting documentation. This provides a thread of consistency through Volume II allowing you to piece together an intricate puzzle to form your own Irrevocable Trust.

## Art of Passing the Buck, Volume II

### Complex Exhibits

This layout shows how to create complex exhibits. Both the life insurance and the stock portfolio could be listed separately.



### Allen-Jay Trust Initial Funding

#### Exhibit C - Life Insurance and Stock Portfolio

Value as of June 2005

Company	Account Name	Custodial Account/- Other	Account Number/Name	Cash Value	Opening Date
New York Life	Sandra J. Allen	Through LaSalle Securities: Face Value: \$271,885.33	60008568 MainStay Plus Variable Annuity	\$ 67,029.81	December 31, 2000
New York Life	Joseph Allen	Face value \$1,150,000.	73-565548 Variable Universal Level	\$193,187.34	January 5, 1993
Aetna Life	Sandra J. Allen	Face value \$850,000.00	43071963	\$170,516.00	January 5, 1999
Dain Rausher	Sandra J. Allen		A8F-004439	\$ 68,025.48	March 31, 1998
Total				\$498,758.63	



### Sample Format 9 - Transferring Collections

For everything going into Trust, we need to not only document the asset, but we need to ensure the Grantor legally places the item in Trust.

Although, many of the assets found in a “collection” category, or a “miscellaneous” category remain with the Grantor until he or she passes, these items need clear

identification. Sometimes would-be heirs hover in anticipation of the “goodies” left when the Grantor dies. Assets of this nature in Trust need to be collected prior to the Grantor’s passing, if at all possible, to remove them from confusion of items listed in a Pour-Over Will, where assets may be earmarked for specific people.

This format is adapted from a standard legal Assignment of Assets to a corporation. Reference to TCUs has been added, and may not be necessary, as this is private information, and the Assignment of Assets may be needed to prove ownership in the future. Others should not know about TCUs.

Because inventoried items are listed in Appendix I, we omit them here. Further, Appendix H - Sample Format 39 gives another example under Assignment of Assets.

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## Assignment of Assets

### Terrance E. Day Trust

I, Caroline E. Haverson, reside at 288 East Larron Ave., Unit 5, Santa Marina, CA 93402 and I hereby exchange jewelry, for Trust Capital Units in Terrance E. Day Trust, created June 15, 2000 whose address is 11884 Corrin Blvd., No. 84, Los Angeles, California. The Trustees of Terrance E. Day Trust are Nora M. Sweth and Kent M. Richards.

The current value of these assets is approximately \$65,000.00. The attached Schedules A, B and C give further details.

BE IT FURTHER KNOWN, for value received I, Caroline E. Haverson, hereby unconditionally and irrevocably assign and exchange unto Terrance E. Day Trust all rights, title, and interest in and to the jewelry as shown on the attached schedules heretofore referenced.

I, Caroline E. Haverson, fully warrant that I have full rights and authority to enter into this assignment and that the rights and benefits assigned hereunder are free and clear of any lien, encumbrance, adverse claim or interest by any third party.

## Art of Passing the Buck, Volume II

The assignment shall be binding upon and inure to the benefit of Terrance E. Day Trust and its successors and assigns.

In confirmation of agreements and commitments made June 15, 2000:

Dated \_\_\_\_\_

\_\_\_\_\_  
Caroline E. Haverson

State of \_\_\_\_\_

County of \_\_\_\_\_

On \_\_\_\_\_ before me \_\_\_\_\_

personally appeared Caroline E. Haverson, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal

\_\_\_\_\_  
Signature

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### Sample Format 10 - Copyright Transfer

The sample documents are taken from *Nimmer on Copyright*, the authority on this subject. Adapted from suggested formats, we present the following Copyright Assignment and Bill of Sale.

The procedure to transfer a copyright is more complicated than presented here. It begins with a letter outlining the reason for the exchange into the Trust, the names of the Beneficiaries for whom this exchange is made, the number of Trust Capital Units given in exchange, the value, and contact information for the Exchanger.

After the letter is received from the Exchanger, Minutes need to be created approving the Exchange. See Appendix H for further details.

There are several pages to be reviewed about this procedure, including obtaining a Document Cover Sheet. We refer you to the Copyright Office for further details. The forms presented here, though, will give you a good foundation for getting a copyright into your Trust.



## Copyright Assignment

### Short Form For Individuals<sup>136</sup>

For and in consideration of the sum of Twenty-one Dollars in silver coin (\$21.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, **NAME, Author** (Seller) hereby irrevocably grants, conveys, assigns and sets over to **NAME Trust** (Purchaser) and its successors and assigns, all of the Seller's right, title and interest in and to the book titled *BOOK NAME*: This assignment pertains to all the assets, properties, receivables, contracts and rights thereto, all as more fully set forth in that certain Bill of Sale, Schedule A, dated as of \_\_\_\_\_ executed by the Purchaser and any contracts pertaining to the publication of *BOOK NAME*, in reference to commissions due or expenses.

The undersigned executed this assignment as of \_\_\_\_\_

\_\_\_\_\_  
Seller: NAME, Author

\_\_\_\_\_  
Purchaser: NAME, Trustee for

NAME Trust



<sup>136</sup>

Format based on Form 21-27, *Nimmer on Copyright* 21-306 (Rel.61-803 Pub.465)

## Art of Passing the Buck, Volume II

### Copyright Bill of Sale

#### Schedule A

*FOR AND IN CONSIDERATION* of the sum of Twenty-one Dollars in silver coin (\$21.00) in hand and of which receipt is hereby acknowledged,

#### *NAME (Seller)*

2985 Mayberry Park Blvd., No. 290

Santa Clements, California 90400

hereby grant, sell, transfer, convey, deliver and give to

#### *NAME OF TRUST (Buyer)*

11668 Narrows Blvd., No. 486

Los Angeles, California 90025

the following described Copyright:

*Dated [DATE], No. [NUMBER] filed with the U.S. Copyright Office  
for the 450 page Manuscript of NAME OF WORK, including: 1)  
Table of Contents. 2) 22 Chapters. 4) Appendix A through E*

The Buyer has paid Seller the full purchase price of Copyright. Payment was made via Cash.

#### *TITLE AND WARRANTY*

The Seller declares the following is true:

1. The Seller is the lawful owner of the Copyright and has the legal right to sell the Copyright; that Seller will warrant and defend the title of the Copyright against any and all lawful claims and demands of all persons;
2. The Copyright is currently free and clear from all liens, claims or encumbrances of any kind;

#### *ADDITIONAL PROVISIONS*

Profits to be administered through the terms of the NAME OF TRUST [INSTRUMENT TITLE] dated DATE OF TRUST.

Seller: Signature:

---

Print Name: NAME, Author

Buyer: Signature:

---

Print Name: NAME Trustee for

NAME OF TRUST

Signed: DATE



### **Sample Format 11 - Return of Assets**

Sometimes it is not worth keeping assets because Beneficiaries may fight over them, or the Grantor falls on hard times and desperately needs cash. The Trust may have the assets, but not be cash rich at the time. In the case of this jewelry inventory, no one may have been willing to take the time to catalogue it, and without sufficient descriptions, the Trustees cannot prove ownership.

The documentation is both for the Grantor and the Trust to establish ownership.



#### **Return of Assets**

### **Terrance E. Day Trust**

We, Nora M. Sweth and Kenneth M. Richards, Trustees of Terrance E. Day Trust located at 11884 Corrin Blvd., No. 84, Los Angeles, California, hereby return the jewelry, to Caroline E. Haverson, and cancel the Twenty-Five (25) Trust Capital Units, Nos. 015 and 034 in Terrance E. Day Trust, created June 15, 2000.

The current value of this asset is approximately \$70,000.00. The attached Schedules A, B, and C give further details.



## Art of Passing the Buck, Volume II

BE IT FURTHER KNOWN, Nora M. Sweth and Kenneth M. Richards as Trustees, hereby unconditionally and irrevocably assign and exchange unto Caroline E. Haverson all rights, title, and interest in and to the jewelry as shown on the attached Schedules A, B and C heretofore referenced.

*We, Nora M. Sweth and Kenneth M. Richards, as Trustees, fully warrant that we have full rights and authority to enter into this assignment and that the rights and benefits assigned hereunder are free and clear of any lien, encumbrance, adverse claim or interest by any third party.*

The assignment shall be binding upon and inure to the benefit of Caroline E. Haverson, and her successors and assigns.

In confirmation of agreements and commitments made:

Dated \_\_\_\_\_

\_\_\_\_\_  
Nora M. Sweth and Kent M. Richards, Trustees

State of \_\_\_\_\_

County of \_\_\_\_\_

On \_\_\_\_\_ before me \_\_\_\_\_  
personally appeared , personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signatures on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal

\_\_\_\_\_  
Signature

## Appendix C

### **Acceptances and Resignations**

This section is about documentation giving the Trustees and Protector the authority to act for the Trust. Here is the formal paperwork about the commitment made in accepting their positions, and describing the duties involved.

#### **Cotrustee**

While the First Trustee's acceptance is part of the Trust Indenture, the Cotrustee's acceptance is not. It needs to be a separate formal document, unless both Trustees sign the Trust Indenture with the Grantor.

Resignations become integral to carrying on Trust business. When a Trustee, or any Officer, resigns, there needs to be proper paperwork to show third parties. The person responsible for various tasks must pass his or her knowledge and documents to the successors.

#### **Third Parties**

Financial organizations need these documents to know with whom to interface with the Trust. The bank and other financial institutions need the acceptances and resignations as part of setting up and maintaining the various Trust accounts.

Keep originals in the Trust book. Photocopies, certified by the Executive Secretary, are given or sent to the third parties who need them.

Through keeping accurate, detailed records, the Trust continues, generation after generation.

The instructions for opening a bank account are found in Appendix F.



## Art of Passing the Buck, Volume II

### Sample Format 12 - Board of Trustees Lineage

The below lineage developed over time. As new Trustees and other Officers became part of the Board of Trustees, a clear understanding of who served before them became helpful in their training process. Although not a standard document, this lineage is used in several Trusts to record changes and is referred to when matters involving dates and signatures become important.

#### Schneifer Family Trust

Position	Name	Hired by	Date	Resigned
Trustee	Richard J. Altner	Rose P. Jenkins	5/15/99	3/3/06
Trustee	Adeena Casnera	Richard J. Altner	5/15/99	12/23/99
Trustee	John Narmia	Richard J. Altner	10/26/99	10/29/04
Trustee	Trenton P. Willis	Richard J. Altner	10/28/04	
Trustee	Afton L. Lorres	Richard J. Altner	3/1/06	



### **Sample Format 13 - Acceptance of Trust**

Derived from a comparison of several Acceptance of Trust documents, this format evolved.

#### **Responsibilities Defined**

The list of responsibilities contained within it seems make Trustees more aware of their duties and obligations when accepting a new position.

We suggest that the Acceptance of Trust be created as two originals, giving one copy for the Trustee to keep with him or her and the other is kept in the Acceptance section of the Trust.

#### **Opening New Accounts**

When opening a new account with an organization that needs a copy of the Acceptance of Trust, the Executive Secretary makes a photocopy, and using the Trust certification stamp, initials the photocopy as an original.

Because of this professional documentation, the receiving party will probably realize that it is dealing with a well-run Trust Group.

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## Art of Passing the Buck, Volume II

### Acceptance of Trust

Karen Rosencroft hereby accepts the position as Trustee of this Trust entitled:

#### **Allen-Jay Family Trust**

I declare that I have read this Trust contract and the terms as outlined are in full force and effective on August 31, 2004. If other Trustees serve on the Board of Trustees, all actions by said Trustees will have a consensus of the majority of the Board of Trustees.

I am an adult of sound mind and legal capacity, and I am not related to the Grantor of this Trust, nor am I employed by the Grantor. I accept and agree to hold, conserve, keep, improve, manage, and distribute all those Trust properties, real and personal, forming, or which may form, the corpus and principal of this Trust under terms contained within the August 31, 2004 Declaration of Contract and Indenture of Allen-Jay Family Trust.

I understand that I am legally responsible, with any other Trustees, for the welfare of this Trust, and that we are to guard the assets for the Beneficiaries. Further, we are responsible for the checking accounts, and for any other financial accounts. If the Trust is challenged, we will handle the legal responses. We are responsible for recording property, and for handling taxes, and all other matters about properties held in this Trust. We are to know the inventory of all the goods held by this Trust. If those who care for these goods pass on, or leave their positions, I as Trustee am responsible for their duties and responsibilities until those who are competent can replace those who left.

IN ACCORDANCE with this Declaration of Contract and Indenture, I reserve the right to resign from this position at any time.

Dated this day: August 31, 2004

Signature of Accepting Trustee:

---

Karen Rosencroft, Trustee

---

Darren Portenkin, First Trustee

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### **Sample Format 14 - Protector's Agreement**

Taken from several resources, this Agreement incorporates the best of experience and legal counsel. Here, you will find a shorted version of the responsibilities outlined in the Trust Indenture.

#### **Investigation**

Although hardly ever needed, it becomes necessary should an errant Trustee need to move on. After a thorough investigation of conduct, and a well-documented testimony of events, the Trust Protector can take this document into a bank and either have the Trustee removed from the account, or simply close the account.

#### **New Bank Account**

The current Trustee, along with a new Trustee, opens a new bank account. This removes the troublesome Trustee from of the financial loop, effectively ending his or her transaction power. The same procedures apply to other financial organizations.

Should the Trustee care to take the battle further, the matter should end quickly once this document is shown to an opposing attorney or to a judge, as the Protector has the final say.

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## **Art of Passing the Buck, Volume II**

### **Protector's Agreement**

August 31, 2004

I, Joseph Allen, have created Allen-Jay Family Trust. Under the Declaration of Contract and Indenture, I may select a Trust Protector to watch the actions of the Trustees of the Allen-Jay Family Trust by said Declaration. As is my right as Grantor of the Trust, I appoint Krenshaw and Delbert, LLC, a law firm, as Protector of the Allen-Jay Family Trust.

The Protector will not be a member of the Board of Trustees. The Protector may receive copies of all Minutes and other relevant information as requested or as may be necessary.

The Grantor appoints this Protector to act independently, and whose powers are:

- I. The right and the authority, on due cause, in its sole discretion, to dismiss a Trustee on written notice, delivery by Certified Mail to said Trustee's address. Due cause can be, but is not limited to:
  - A. Violation or lack of fulfillment of the Declaration of Contract and Indenture dated August 31, 2004.
  - B. Behavior bringing dishonor to the Trust, including alcohol and drug addictions.
  - C. The Trustee is insolvent, thus unfit to manage the Trust.
  - D. Hostility or lack of cooperation among Cotrustees that hinders Trust management.
  - E. General incompetence, inability or failure to act, or declines to act.
  - F. Excessive compensation.
- II. The right to change characteristics of the Trust that could expose its assets to risks due to unforeseen changes, such as a change of Trustee, the situs of the Trust assets, and the choice of applicable law provision.

## APPENDIX C

- III. The right to review Trustees fees, salaries, wages, and distribution percentages to ensure they are in alignment with cash flow. The right to decrease or increase fees, salaries, wages and distribution percentages if necessary to protect the corpus of the Trust for the Beneficiaries.
- IV. The right to ask for an audit of the Trust to help, teach and develop better protocols to protect the assets, or as part of an investigation into a Trustee's conduct.

The Protector, as outlined in the Declaration of Contract and Indenture dated August 31, 2004, acts as a mediator should any disputes arise within this Trust organization, with outside parties.

The Grantor gives no other powers to the Protector.

The Trustees recognize no other powers of the Protector.

This Agreement therefore extends to Krenshaw and Delbert, LLC, represented by David P. Delbert, an appointment to become the Protector of the Allen Jay Family Trust

---

Joseph Allen, Grantor

### ACCEPTANCE BY THE PROTECTOR

I, David P. Delbert acting for Krenshaw and Delbert, LLC, accept this appointment as Protector of Allen-Jay Family Trust. We agree to act under the Declaration of Contract and Indenture, a copy of which I have. Our firm agrees to act independently and to watch Trustee actions. I understand that we have no other duty, responsibility or authority except as outlined here and as detailed in the Allen-Jay Family Trust Declaration of Contract and Indenture.

---

David P. Delbert for Krenshaw and Delbert, LLC

August 31, 2004

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## **Art of Passing the Buck, Volume II**

### **Sample Format 15 - Resignation Checklist**

Having experienced the coming and going of several Trustees, it became necessary to give each of them an outline of what to include in their resignation. This format applies to all formal resignations.

#### **Reasons for Leaving**

This checklist puts on record the reason for leaving, including irreconcilable differences that a departing member of the Board of Trustees may feel are necessary to state.

This is also an excellent place to name the next Trustee, if he or she is known.

#### **Unfinished Business**

If there are reports and financial arrangements needing to transition or close before the Trustee leaves, then the date of resignation should be 30 days or more—enough time to ensure the information is completed and turned into the Board of Trustees.

Sample Format 16 is the resignation created from this checklist.

You will find the resignation shown in Sample Format 16 is needed when new financial accounts are opened to demonstrate the unbroken lineage. If there are several Trustees, not all of the paperwork is needed for every situation; it depends on who signed the acceptance and how the lineage dates overlap.

## APPENDIX C

Required	Information Needed	Current Information
Name and Address of the Trust		Trenton P. Ains Trust No. 239 489 Appleton Way Chicago, Illinois 60047
Reference	Name	Peter M. Montoya
	Position	Trustee
	Type of Trust	Management Trust
	Date of Trust	April 9, 1963
Reasons	<input type="checkbox"/> Overwhelming commitments	
	<input type="checkbox"/> Conflict in schedule	
	<input checked="" type="checkbox"/> Business ventures in conflict with Trust business	
	<input type="checkbox"/> Health difficulties	
	<input type="checkbox"/> Irreconcilable Differences	
	<input type="checkbox"/> Other	
Date of resignation		6/10/83
Successor	<input type="checkbox"/> Name	
	<input checked="" type="checkbox"/> Whom the Trustees choose	
	<input type="checkbox"/> Recommend (give name)	
	<input type="checkbox"/> Approved Successor	

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## **Art of Passing the Buck, Volume II**

### **Sample Format 16 - Resignation Letter**

The resignation checklist developed from experience includes all the necessary information essential for the Trust records.

#### **Bank Accounts**

This letter is included with paperwork for opening bank and financial accounts and other business deals needing formal notification of the status of Trustees.

APPENDIX C

May 13, 1983

To the Board of Trustees of  
Trenton P. Ains Trust  
No. 239  
489 Appleton Way  
Chicago, Illinois 60047

Re: Resignation of Peter M. Montoya as Trustee  
Trenton P. Ains Trust, a Management Trust  
Created April 9, 1963

Because of my involvement with business ventures in conflict with the business and investments of Trenton P. Ains Trust, I can no longer serve on the Board of Trustees.

Under the terms of the Declaration of Trust, I am resigning effective June 10, 1983.

Delivery of this resignation to the Executive Secretary notifies the remaining Trustee(s). I recognize any appointed Successor Trustee, as may be named in the Trust Minute book, or whom the Trustees choose, becomes a full member of the Board of Trustees on acceptance of his or her appointment. This person exercises all the powers and authorities granted to the Trustee under the organizational document.

Witness my hand this \_\_\_\_ day of \_\_\_\_\_, 1983

Peter M. Montoya	Acknowledged as received by Cheryl L. Wilson., Executive Secretary

Note: The notarization is only needed on financial account resignations, and the notary may not be needed because the financial institution has a record of the signature of the person resigning on file.

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## Art of Passing the Buck, Volume II

## Appendix D

### **Minutes**

This section shows you how Minutes happen, what they are and how to use them. Minutes sometimes document several telephone conversations in which all Trustees participate over a period of one or two days before a decision is made. The Minutes summarize the points, considerations and state the resolutions. All Trustees sign, acknowledging their agreement.

It is helpful if Minutes are well written, have interesting background points, and flow cohesively from one matter to the next from meeting to meeting. The latter is sometimes not possible because of the time lapse between events reported on Minutes. Vital information and details of core issues assist greatly when another Trustee must take over. Reading the Minutes is the first training assignment.

### **Complex Decisions**

The Minutes become important, especially when there are complex decisions and a multitude of subjects, to keep all participants “on the same page.” People refer to the Minutes when they cannot remember when their particular task is completed, and project due dates.

Minutes also resolve disagreements when there are questions about responsibility.

### **Lengthy Details Save the Day**

When an on-going problem drags on over a couple of years, constantly being brought up in Board of Trustees Meetings, or even in General Manager's Meetings, the detailed documentation evolved can be the “magic bullet” to deter a lawsuit. It can also be just the opposite if the Minutes have not been recorded with care so they do not incriminate or give evidence of wrongdoing.

Further, to keep the Trust in line with legal procedures, create at least one Minute a year.

## **Art of Passing the Buck, Volume II**

### **Action Meetings**

The great advantage is not totally found in the Minutes. It is with the interaction of the Board members and their commitment to handle Trust business. The more meetings, the better the Trust is managed. As mentioned in Volume I, if funds are short, the Trustees may be willing to meet and wait for payment until the Trust accumulates a strong enough cash flow. Meetings are where it all happens.

We emphasize that Board of Trustees meetings are educational opportunities, and demonstrate this in a lengthy Board Meeting shown in Appendix D, Sample Format 18.

Presented here are several Minutes, enough to give you ample exposure to the inner workings of a Trust.

Before we get to that meeting though, we need to start at the beginning with the Agenda.



### **Sample Format 17 - Agenda**

When a group gathers, it is important to discuss subjects in an orderly manner, or there is chaos. To keep the meeting moving in one direction, following an agenda allows the participants to be prepared and involved.

The financials as well, as exhibits of charts, tables and any necessary documents to be review, are attached to the agenda. Do not leave them loose, for there will be total confusion. Number each page.

Whoever conducts the meeting needs to keep the group on the subject shown on the agenda in the order presented. Otherwise, the person putting together the Minutes has difficulty following the order of presentation and the decisions.

### **Shredding**

Sometimes the packet for participants is 10 to 15 pages thick. Board members write on their copies, and so unless it is absolutely necessary to take their agenda sets with them, it might be best to shredded them after the meeting or at least shred the financials.

### **Legality of the Originals**

The documentation in the meeting is attached to the final Minutes, unless otherwise noted, and filed in the Trust book Minutes section. Use clean copies, without handwrit-

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ten notes. As rare as it might be, there is always a possibility the Trust book could become part of a lawsuit, and it is the originals, not the copies, which are subpoenaed.

This sample Agenda is a master format. Rarely does a Board of Trustees meeting cover all these subjects.

Please refer to the agenda following this explanation.

### **Administration**

Put miscellaneous and educational matters here, noting any Board member training.

### **Policies**

Your Trust may not have policies and procedures, but this is the time and place to discuss any policies or procedures to put into place.

### **Protector**

The Protector does not normally attend meetings, but has he or she received any recent Minutes? Is there any formal way to update all Trust members, and is the Protector included?

### **Recent Minutes**

The process of creating Minutes requires the review of a draft copy, and then a final copy signed by the Trustees. This is not a simple process, especially when Board members have different schedules. We have discovered that putting the status of the last Minutes on the current agenda is where we can track down the previous Minutes that may have inadvertently been forgotten on someone's desk. Further, when creating the agenda a review of the previous matters often leads to a more thorough current agenda and the completion of old business.

### **Medical**

Trusts often pay for medical insurance, and handle the physical well being of Beneficiaries. Decisions about long-term care and catastrophic care for some of the Board members and Beneficiaries can happen over a year or more. These are complex issues offering many variables.

### **Next Board of Trustees Meeting**

Before getting into the greater details of financial and legal matters, it is best at the beginning of a meeting to set up the next meeting, for otherwise the decision is



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forgotten. Although the next meeting may be four to six months away, putting it tentatively on the calendar now ensures it happens.

### **Legal**

Pertaining to the education of Board members, this is a time when court cases and newspaper articles about Trust matters need review. The more the Officers of the Trust know about proper procedures, the more the Trust paperwork is in alignment with legal precedent. If done correctly, this section of the Board meeting is enlightening and even somewhat mind boggling. Some of the previously decided court cases reveal startling information, as you have probably seen through the Betts case in Volume I, and by reviewing the scam Trusts found in Chapter 8.

The legal section is where issues about the Durable Power of Attorney belong, as well as discussions about fictitious names chosen for the Trust.

This section is where the Board members review current newspapers about the legal clippings or court cases relevant to the Trust. Adding to the Board's education base can only be a benefit to the Trust Group. Tricky areas of law, such as quasi-contracts and quantum meruit are discussed here to make Trustees more aware verbal commitments are binding.

If there are pending legal matters, or the Trust is involved in negotiations, here is where the topic becomes relevant.

### **Financial**

There are various formats to present information about a Trust. In this discussion, we use a standard Balance Sheet and Profit and Loss Statement (P&L). In some Trust systems, it is appropriate to print the checkbook register, creating columns for the various expenses. This format depends on how extensive the Trust business becomes, and the preference of accounting professionals. When presenting information to Beneficiaries, the checkbook format is probably best, and applies to Statutory Trusts where the Beneficiaries see a report at the end of the year. This is a more simple format, and easily understood by those uninitiated in the complexities of accounting.

We find the standard business format works well with a complex Irrevocable Trust operating more like a business than as a distribution center.

The financial section was the second subject discussed on the agenda until we discovered how upset some people get when discussing money. Depending on the state of mind of the Board members and what the issues are, you may want to put Financial last on

the agenda, otherwise there may be an early end and many needed decisions will not be made.

We have included the standard sections, naming Banking as the first one. Many times there are signature issues, wire transfer problems, and discussions about Certificates of Deposits and Money Market accounts, with the associated interest rates. Getting these subjects out of the way clears the path to get into the deeper issues of the Trust.

You can start with either the Balance Sheet or the P & L. If another accounting format is more appropriate, start at the simplest point—if there is one. We find most people want to know about the investments when funds are tight, and others want to know about the cash flow first when funds are flowing.

For the uninitiated in accounting, the Balance Sheet lists the funds in the bank, the principal investments and their current value, and liabilities such as credit card debt, and loans. On the Balance Sheet is the equity, or the Trust's value, as of the date of the Balance Sheet.

On the P & L are the cash flow in and the expenses. For example, rental payments received by the Trust appear on the Profit and Loss, while the value of the property rented appears on the Balance Sheet. If the property belongs to an Asset Holding Trust, the value of the property is in reference to the name of that Trust.

Although the P & L shows the current expenses for the period, there may be issues about the expenses, and a need to stabilize the cash flow. In this case, does the Board of Trustees want a budget, or is there a comparison to a budget?

### **Trust Certificate Register**

Sometimes, this subject is entirely forgotten. A review or presentation of the current Certificate Register is probably appropriate. Here, changes are discussed, as well as decisions about the needs of the Trust Capital Unit Holders.

### **Asset Holding Trust Status**

Managed by the Management Trust, these discussions are reported separately per Asset Holding Trust. If, for example, the repair and maintenance list of a particular property is lengthy, a separate meeting may be scheduled. If it is necessary to approve funding for improvements, that can be done in the main Board of Trustees Meeting.

Also discussed in this section is the status of the holders of Units of Beneficial Interest.

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The following outline needs to be extensively edited to tailor it to your own Trust meeting.



### **Your Trust Name**

#### **Board of Trustees Meeting**

Date and Time: \_\_\_\_\_

Place: \_\_\_\_\_

Attendees: \_\_\_\_\_

#### **I. Administration**

##### **A. Education**

1. Training courses
2. General questions concerning Trust matters
3. Recent policies and procedures
  - a. Subject 1
  - b. Subject 2
  - c. Subject 3
4. Protector
  - a. Attendance at Meetings
  - b. Training
  - c. Does he or she get the update information?
5. Successor Trustees and General Managers
  - a. Who are they?
  - b. What is their current status with the Trust?
  - c. What assignments for them?

##### **B. Status of Recent Minutes**

1. Date of last meeting (Put the date here)
2. Signed? Draft? (Put the status here)
3. Review last Minutes and put unfinished subjects into this outline

##### **C. Medical (Does this apply?)**

1. Insurance?
2. Long-term Care
3. Catastrophic Care

##### **D. Set up next date for Board of Trustees meeting**

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- E. Moving and address changes
  - 1. Update Trust address list
  - 2. Status of mailbox payments
  - 3. Storage lockers
- II. Legal
  - A. Current memos and news clippings
    - 1. Subject 1
    - 2. Subject 2
    - 3. Subject 3
  - B. Other questions or issues
- III. Financial
  - A. Banking
    - 1. Name of bank
    - 2. Current signatures
    - 3. Issues about accounts
  - B. Balance Sheet
    - 1. Current investments (List current investments here)
    - 2. Potential Investments (List potential investments here)
  - C. Profit and Loss
    - 1. Review sources of income
      - a. Interest
      - b. Partnerships?
      - c. Business ventures?
      - d. Other?
    - 2. Review expenses
    - 3. Cash Flow
      - a. Is there a budget?
      - b. Do you want a budget?
- IV. Trust Certificate Registers
  - A. Trust Capital Unit Holders
  - B. Units of Beneficial Interest (List Beneficiaries here)
    - 1. Name 1
    - 2. Name 2
    - 3. Name 3

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- C. Additional Trust Certificates to be issued
  - D. Resignations and Removals
  - E. Splits
- V. Asset Holding Trust Status (Name Trusts)
  - A. Trust 1
  - B. Trust 2
  - C. Trust 3
- VI. Other Items



### **Sample Format 18 - Board of Trustees Meeting Minutes**

Converted from those taken at a Board of Trustees Meeting, these Minutes demonstrate the wide variety of subjects and the details discussed. Although some of the events are changed to both be in alignment with the Allen-Jay Family Trust, and to obscure the original meeting details, we kept the flow of information.

We use a couple different styles of how to format RESOLVED. There is no standard method, only that the information in the RESOLVED is standalone, and the information is complete. Include, full names and all numbers for items identified.

Some of the items discussed may not be totally clear because they are adapted from a real Board of Trustees Meeting. We kept this information as close to the original discussion as possible to demonstrate the details found in Minutes. In this light, you will find data within this discussion found no where else in this book.

There are some philosophies that Minutes should be brief, short and to the point. Some go so far as to only include RESOLUTIONS and nothing else. From experience, we found we need the background, and especially the date on which certain matters came to the attention of the Board of Trustees. The following is an example of extensive detail of a meeting that occurred. The Board of Trustees of your Trust needs to determine how much information to include in the Minutes.

The agenda, not shown, outlined the subjects discussed, and in this order.

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### **MINUTES OF THE TRUSTEE MEETING OF Allen-Jay Family Trust**

Date: August 11, 2006

Time: 3.07 p.m. to 4:36 p.m.

Location: Canton, Ohio

Subject: Trust Capital Unit Annual Activation  
Cash Flow Projection  
Private Investment Banker

The following, forming a quorum, were present at this Board of Trustees meeting: Darren Portenkin, Karen Rosencroft, Joseph Allen, George Allen, Terry Baker, Sandra Jay Allen.

#### **Administration**

#### ***Education***

#### **Policies And Procedures**

#### ***Coin Collection Inventory***

Ms. Rosencroft stated that finding a coin collector to give an honest appraisal may be difficult. She recommended getting several appraisals. Mrs. Allen, experienced in putting together a coin collection inventory, said the value changes every year. Mr. Portenkin suggested making an inventory every other year. Because of price change, Mrs. Allen agreed.

Mrs. Allen stated, five years ago it took her about ten hours to inventory a coin collection of 3,000 coins. The value was about \$65,000.00.

*Foreign Anonymous Bank Accounts*

Ms. Rosencroft said it is difficult to find anonymous bank accounts. Mr. Portenkin said that a private bank does not need to release information without a court order. Mr. Allen said he heard there are ways to stop agencies from taking bank records. Mr. Portenkin said it is true, but complicated and sometimes expensive.

Mr. Portenkin said Swiss Bank accounts cost \$50,000.00 and the larger the deposit, the more it costs. It is also a wasting asset, because there is no interest and the fees drain the principal.

*Writing A Business Letter*

As noted by the Board of Trustees, there are different letter formats. Ms. Rosencroft said that each letter should address one subject or use a heading for each subject. The Board members reviewed various formats and chose those best suited to Allen-Jay Family Trust.

Education - Successor Trustee Training Manual

George Allen noted the training manual was either in Mrs. Allen's or Ms. Rosencroft's mail slot. Because Terry Baker, the Account Manager, joined the Trust group two months after it began, she never went through the original training. Being in line to become a Successor Trustee, it was

*RESOLVED that Terry Baker will take the Successor Trustee Training Manual home to read, and she will complete it by September 30th.*

*IT WAS FURTHER RESOLVED that Terry Baker will turn in her Trustee training tests by September 30th.*

*Status Of Recent Minutes*

George Allen apologized. He has not finished the February 2006 Minutes. He thought he completed them until he assembled the Agenda for this meeting. He is correcting the February Minutes. They should be ready to sign by September 5th, 2006.

*Next Board Of Trustees Meeting*

After discussion it was

*RESOLVED that March 15, 2007 at 3:00 p.m. in Canton, Ohio will be the next Board of Trustees meeting.*



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### **Legal**

#### *Articles and Memos*

#### Vocabulary for Civil Code Section 761-783.1 and 722-726

The Board of Trustees discussed the following words:

Defeasible, Fee Simple, Estates Tail and Remainder.

Ms. Rosencroft stated that some of these phrases are not in the current dictionaries and she has spoken to a librarian to urge her to keep an old Black Law's Dictionary on the shelf. They become valuable because they explain the laws at the time of the legislation.

#### Unwanted Protection:

The Board members discussed a newspaper article where both daughters were angry with their father because he set up Irrevocable Trusts for them. Because their husbands could get none of the wife's money, the marriages collapsed—at least that is what the daughters thought. The Board members became perplexed why the daughters were so unhappy about their arrangement. Their marriages are now over, yet all their assets safe.

Mr. Portenkin commented there is a phrase in the bible that inheritance should apply to grandchildren. The Board members discussed skipping the first generation. Mr. Portenkin stated there is usually trouble between parents and children, where grandchildren are often closer to their grandparents.

#### Trusts, Spendthrift Clause And I.R.S. Liens:

The Board members reviewed a newspaper article about the IRS and liens against the Beneficiary funds. As an exercise, the Board Of Trustees is to find the spendthrift clause in the Allen-Jay Family Trust book.

#### *Beneficiary Status:*

#### New TCUs (TCU's):

George Allen exchanged \$20,000.00 for 15 TCU's. His distribution begins December 1<sup>st</sup>.

Joseph Allen mentioned his daughter, Tammy, achieved high grades last year. The Board of Trustees promised she would get another Trust Capital Unit. After further discussion, it was

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*RESOLVED to issue one Trust Capital Unit to Tammy Allen for scholastic achievement in 2006.*

### Monthly Beneficiary Requirements:

Both Mr. Portenkin and Ms. Baker reported there are 110 TCUs, paid monthly. Multiplied by \$50.00 each, this equals \$5,500.00. Mr. Portenkin stated the Trust monthly cash flow is about \$10,800.00. This more than covers Allen-Jay Family Trust Expenses.

Mr. Portenkin explained that as funds increase, the Board decides whether to reinvest or to distribute.

Mrs. Allen asked to place some of the collected money from gifts and disbursements to the four children to get better interest rates. After further discussion it was

*RESOLVED that Darren Portenkin and Karen Rosencroft, will look into other investments for funds held for Carl, Rosie, Peter and Tammy, the children of Joseph and Mrs. Allen.*

*IT WAS FURTHER RESOLVED that twenty-five percent of the current funds in the Eston Money Market Account will be moved to achieve a higher yield.*

### ***Current TCU Holders:***

George Allen noted that Gretta Allen exchanged funds for TCUs after the start of the Trust. She did not want to take the disbursement then. The Board members forgot about it. After further discussion it was

*RESOLVED that George Allen will find the previous Minutes to discover how many TCU's were exchanged to Gretta Allen.*

*IT WAS FURTHER RESOLVED that Gretta Allen will receive a distribution payout for these TCU's beginning September 1<sup>st</sup>.*

### **Financial**

#### ***Cash Flow Projections***

The members of the Board of Trustees looked at the detailed financial analysis chart supplied by Mr. Darren Portenkin. After further discussion it was

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*RESOLVED the financial chart analyzing the investments of the Allen-Jay Family Trust will be deleted from the agenda paperwork and Minutes, and although referred to here, is not available outside this meeting. The physical paperwork will be shredded.*

Mr. Portenkin explained the first column is the date when the investment began. He went over some of the listed investments mentioning that TMT is slow pay and although \$1,000.00 a month is due, they were \$100.00 short for August.

He explained there are three different investments into XYT. Each investment pays for five years.

The commodities investments in Trebber Funds are volatile with large swings in payout percentage. Trebber Funds pays anywhere from 6% to 40% a year. This is a new investment, and the Trust has not received any returns.

The Actual Investment column reflects all of these smaller investment companies, totaling \$108,707.95 with an earning potential value of \$95,036.85. The projected payout for September is \$15,641.25. This number continually increases monthly unless some of these small investments fail. We expect anywhere from a three-to thirty percent failure rate with these investment types. The status is negative until the Trust regains its principal. When the principal is paid back the status column shows zero or positive. Positive numbers show Allen-Jay Family Trust makes a profit on its original investment. This is why, Mr. Portenkin does not now wish to invest more funds. The status column must have more positive numbers. Currently, the monthly interest is 2.55%. September projections expect to be lower than 0.9%.

Mr. Portenkin seeks a person to train to handle Internet Trades. He presented the attached list of qualifications as shown on pages 3 and 4. The person must be computer savvy and especially familiar with Internet procedures.

The trainee needs broad business experience, including management. He or she is a risk taker or a gambler and good with numbers, especially enjoying complex formulas. He or she should be younger than 60 years and naturally secretive. Being financially ambitious, with accounting experience, is extraordinarily helpful. Accountant interface is important. There needs to be a translation from any of his or her own actuary format to accounting standards. For example, financial projections do not apply to an accounting format, and are often designed on spreadsheets or through other programs. Translating gains from spreadsheet tracking to how the accounting needs to reflect this

## APPENDIX D

in the monthly financials usually needs creative thinking and cooperation with the accountant.

### ***Dain Rauscher Stock Portfolio***

Mr. Portenkin stated the stock portfolio is weakening overall. Some stocks remain strong, but more than half have declined. After further discussion it was

*RESOLVED that Joseph Allen, Darren Portenkin and Karen Rosencroft will review the Dain Rauscher Stock Portfolio to decide what stocks to sell.*

*IT WAS FURTHER RESOLVED that Karen Rosencroft will explore real estate investment opportunities.*

### ***Oppenheimer Funds***

Ms. Rosencroft pointed out the mutual fund makes only 2% a year and recommends a transfer of some of the funds to a different account to earn a greater percentage. After further discussion it was

*RESOLVED to remove \$20,000.00 from the Oppenheimer Fund to place into other programs where the annual return is no less than eight percent.*

### ***Balance Sheet***

The Board members referred to page 13 of the agenda.

#### **ASSETS**

##### **Cash And Bank Accounts**

Ms. Baker reported:

- ▶ The Jackson-Olson Federal Money Market Account of \$134,041.35 is accurate as of today.
- ▶ The Jackson-Olson Federal Savings Bank checking account of \$22,048.34 is now down to \$11,000.00, as payouts have occurred.
- ▶ The Cash Account is zero.

##### **Other Assets**

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Capital Unit Payments is in error and Ms. Baker needs to delete that line. A customer invoice of \$76.50 belongs to Merret International. After further discussion it was

*RESOLVED to write off Merret International as a bad debt.*

Ms. Baker explained the Premier Direct No. 1819 of 1885 is to collect insufficient funds.

All other assets as listed are accurate.

### **LIABILITIES AND EQUITY**

#### **Credit Cards**

The credit cards are paid off monthly, and show a zero balance.

#### **Other Liabilities**

Business bills have been paid.

The \$43,470.83 Ellis loan payoff is at the rate of \$603.34 a month. This loan refers to the Ambers payment made to Jason Williams.

A discussion followed about potential investments. Mr. Portenkin said the Trust has enough funds ahead to consider long-term investments where returns are five to ten years in the future. He also explained there are South American no-load Mutual Funds emerging that pay anywhere from 30% to 50% a year. After further discussion it was

*RESOLVED that \$1,000.00 to \$5,000.00 are approved to invest into the South American Mutual Funds to test stability.*

Mr. Portenkin explained that Happer Mortgage, a cornerstone investment, has not paid in two months. Currently, we are tabling some of our investment plans until resolution.

#### ***Profit And Loss***

The Board of Trustees reviewed the Allen-Jay Family Trust July 2006 P&L, page 14. Ms. Baker was directed to delete the Distribution In of \$5,500.00 and to reverse the funds of \$6,881.00 as investment income.

There were no other changes on the P&L. After further discussion it was

*RESOLVED the Board of Trustees accepts the Balance Sheet and the Profit And Loss with noted corrections.*

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There being no further business to come before the board, the Trustees told the Executive Secretary to enter these proceedings into the Trust Records, and the meeting was adjourned.

For the Board of Trustees	
Darren Portenkin, Trustee	Karen Rosencroft, Trustee
George Allen, Executive Secretary	

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### Sample Format 19 - Insurance Policies

This is a Policy and Procedure about insurance policies. As you can see it has been updated several times. When adding an insurance policy to your Trust, these are some of the factors to consider, and paragraphs to include in Minutes.



#### Allen-Jay Family Trust

<b>Subject:</b>	Insurance Policies	<b>Number:</b>	492 B
<b>Reference(s):</b>		<b>Revision</b>	E - July 30, 2006
<b>Objective:</b>	Transfer Insurance Policies into a holding Trust	<b>Distribute to:</b>	Board of Trustees
<b>Date Created:</b>	July 27, 2007		

#### Policy:

Any member of this Trust organization can assign a life insurance policy to Allen-Jay Family Trust. The Management holds the policy for the the Asset Holding Trust . When the policy pays out, the Management Trust gives out the funds by specific instructions from the transferor, who can be a the Grantor or an Exchanger. The insurance company identifies the Beneficiary as Allen-Jay Family Trust, which receives the funds and shares them according to the wishes of the Grantor or Exchanger.

Treat the insurance policy as any other asset received into the Allen-Jay Family Trust. When applicable, use the below listed information to more formally describe in the Minutes the details relevant to the Allen-Jay Family Trust:

1. **Ownership of Life Insurance Policies.** Any life insurance policy or policies applied for and bought by the Trustee or assigned to the Allen-Jay Family Trust becomes irrevocably vested in the Allen-Jay Family Trust, as the owner and Beneficiary. Allen-Jay Family Trust shares earnings with the Beneficiaries per the instructions of the Grantor or Exchangers. Without specific instructions, share funds based on the TCUs owned by each TCU Holder. Grantor or any Exchangers, exchange the policy or policies with other documents neces-

sary to transfer all rights of every kind and ownership to the Allen-Jay Family Trust. The Grantor or any Exchangers keep no rights or incidents of ownership in any policy or policies assigned to the Allen-Jay Family Trust or bought by the Trustees.

2. **Payment of Premiums.** The Grantor or any Exchangers will be under no duty to pay premiums, assessments or other charges necessary to keep each policy included in the Allen-Jay Family Trust in force. The Trustee will pay the premiums and keep the policies in force so long as the principal of the Allen-Jay Family Trust is sufficient to do so. The Trustees will immediately notify the Grantor or Exchangers in writing of lack of cash flow to pay the premiums. Either of these parties may then chose to pay them.
3. **Trustees' Rights in Life Insurance Policies.** The Trustees for Allen-Jay Family Trust, acting solely for the Beneficiaries, have all the rights of an owner. This includes but not limited to:
  - a. the right to borrow on any policy,
  - b. the right to exchange any policy for another,
  - c. the right to apply dividends to pay premiums and
  - d. any other right available to the owner of a policy of life insurance.
4. **Collection of Earnings.** On the death of the insured under any policy held by and payable to the Allen-Jay Family Trust, the Trustees receive the net earnings and hold them as part of the principal of Allen-Jay Family Trust. The Trustees need not engage in litigation to enforce payment of any policy without indemnification to satisfy resulting expenses.
5. **Limit of Responsibility of Insurance Company.** Payment and receipt of funds by Allen-Jay Family Trust, relieves the liability of any insurance company, which need not take notice of this Trust instrument or become involved in any payment.
6. **Trustee's Responsibility Before Maturity of Life Insurance Policy.** Before the maturity of any life insurance policy held by the Allen-Jay Family Trust, the Trustees' hold such policy or policies owned by the Management Trust in safekeeping. The Trustees pay premiums due. If Allen-Jay Family Trust does



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not have enough available funds, give notice to the Exchanger who then has the choice of paying the premium.

### Procedure:

- The policy owner must write a proposal to the Board of Trustees to exchange the policy for Trust Capital Units.
- The policy owner can specify or add Beneficiaries to the Asset Holding Trust in which the policy belongs. If the policy is not in an Asset Holding Trust, Minutes are created as a guideline to the Board of Trustees about distribution of the policy from the Management Trust.
- The policyholder writes a letter to the insurance company transferring the policy to the Trust. The insurance company sends the correct transfer paperwork.
- The Trustees go through the formal procedure of accepting the policy and issuing the Trust Capital Units.
- Example letter attached.

ATTACHMENT

Board of Trustees	
D. Ray Torrez, Trustee	Stanley M. Corres, Trustee
Robert Torrez Jasoreens, Executive Secretary	Rebecca Dawn Jasoreens, Trustee

Name  
Home Address  
City/State ZIP

Date

Telephone

Agent's Name  
Insurance Company  
Address  
City, State ZIP

Dear Agent Name:

Transfer of Life Insurance Policy

I, Sandra Jay Allen, am now the owner of a life insurance policy with your company labeled as Policy Number INSERT NUMBER. The insured person on the policy is Sandra Jay Allen.

I transferred and assigned all my right, title and interest in and to this policy of life insurance to the Allen-Jay Family Trust, settled August 31, 2004.

The Trustees of that Trust unanimously accepted the transfer of the life insurance. They specified:

1. The Allen-Jay Family Trust is owner of the policy.
2. The Allen-Jay Family Trust is the sole Beneficiary of the policy.
3. Pay insurance premiums to Allen-Jay Family Trust.

The names of the Trustees are: Darren P. Portenkin and Karen Rosencroft.

Please change your records immediately to reflect this transfer. Send applicable transfer paperwork to my address shown above.

Sincerely,

Sandra Jay Allen.  
Former Policyholder



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### **Sample Format 20 - Trust Capital Unit (TCU) Split**

Because TCUs are more complicated than other aspects of the Trust process, we enclose this Minute as a demonstration of how a four-to-one Trust Capital Unit split occurs, giving only a two-to-one split to the current TCU Holders.

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#### **MINUTES OF THE BOARD OF TRUSTEES MEETING OF Smith Family Trust**

Date: September 9, 2006  
Time: 4:25 p.m.  
Location: Prescott, Arizona, and Cheyenne, Wyoming  
Subject: Trust Capital Unit (TCU) Split  
TCUs Issued: Gleason and Accelon

The following, forming a quorum, were present at this Board of Trustees meeting: Karen Loren, April Levin (by telephone), Mary P. Smith, Jamie J. Allison.

Ms. Allison pointed out the Trust Capital Register is nearly out of available TCUs. After further discussion it was

*RESOLVED there will be a four-to one split, and current Trust Capital Unit Holders will receive two-to one for their current TCUs.*

Ms. Allison stated two Trust Certificate have not been issued, even though they have been approved, and she does not know how many TCUs should be issued. After further discussion it was

*RESOLVED to issue 15 Trust Capital Units to Andrea I. Gleason, approved October 25, 2004 and issue to Anita Marion Accelon 10 TCUs, approved June 27, 2005. Schedule A shows the additional authorized Units to be issued.*

**Schedule A**

<b>Issue Date</b>	<b>Holder's Name</b>	<b>Quantity</b>	<b>TCU No.</b>	<b>Sept 9, 2006 Added</b>	<b>Total Certificates</b>
30Mar92	Mary P. Smith, Grantor	5	2001	5	10
30Mar92	Mary P. Smith, Exchanger	100	2002	100	200
19Aug97	Janalyn L. Norar Trust, Trustee	251	2003	251	502
15Jun00	Mary P. Smith, Exchanger	40	2004	40	80
01Jul00	Wind West Trust	10	2005	10	20
01Jul00	James E. Harold Trust	10	2006	10	20
01Jul00	Electronic Concepts Trust	10	2007	10	20
01Jul00	Daylight Trust	10	2008	10	20
01Jul00	Sarah Clair Trust	10	2009	10	20
01Jul00	James Averson Trust	10	2010	10	20
01Jul00	Camelback Century Trust	10	2011	10	20
25Oct04	Andrea I. Gleason	15	2012	15	30
27Jun05	Anita Marion Acceleon	10	2013	10	20
09Sep06	4 to 1 Split, Total of 2,000 Certificates available.				<b>982</b>

There being no further business to come before the Board, the Trustees told the Executive Secretary to enter these proceedings into the Trust Records, and the meeting was adjourned.

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For the Board of Trustees	
Karen Loren, Trustee	April Levin, Trustee
Jamie J. Allison, Executive Secretary	



### **Sample Format 21 - Management Residential Property**

Converted from a real situation, this sample Minute demonstrates how the expenses are handled for residential property held by the Management Trust. It shows you how the caretaker interfaces with the Management Trust, and how the expenses for the Trust property are redirected. When this Minute is in place, the formal management begins.

In the beginning of a Trust, people involved easily get confused. Seeing these instructions in writing clarifies responsibilities.



#### **MINUTES OF THE TRUSTEE MEETING OF Dawson Trust**

September 13, 2004

Canton, Ohio

Subject: Residential Property Expenses

The Trustees formed a quorum, and the following were present at this Board of Trustees meeting: Joseph Allen, George Allen, Darren Portinkin, Karen Rosencroft.

Karen Rosencroft reminded the Board of Trustees that once the residential property is placed into the Dawson Trust through filing the deed at the County Recorder's office, all the expenses of the property are the responsibility of the Management Trust, Allen-Jay Family Trust, and the billing address needs to be changed to Allen-Jay Family Trust.

The cash flow from passive income covers management expenses. Allen-Jay Family Trust creates monthly or quarterly reports as needed or requested.

Because Sandra Jay Allen takes responsibility for the upkeep of the property until it is sold, her caretaker contractor fees are also paid by Allen-Jay Family Trust. After further discussion it was

RESOLVED that Sandra Jay Allen shall change all bills pertaining to the upkeep and maintenance of the residential property to the Management Trust fictitious name, Lawndale Direct, 492 East Elm,

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No. 84, Canton, Ohio 50399. The telephone numbers are: (904)  
892-3306 Voice, (904) 486-3329 Fax, e-mail [direct49@czone.com](mailto:direct49@czone.com)

Darren Portinkin noted that neither the telephone bill, nor any cable bills are part of residential upkeep, and are not paid by the Allen-Jay Family Trust.

There being no further business to come before the Board, the Trustees instructed the Executive Secretary to enter these proceedings into the Trust Records, and the meeting was adjourned.

For the Board of Trustees	
Darren Portinkin for Allen-Jay Family Trust, Trustee	Karen Rosencroft, Trustee
George Allen, Executive Secretary	



## Sample Format 22 - Residential Property Sale

Using the format of the sale of residential property and purchase of a condominium, this Minute shows you how to record the various transactions. It also details, step-by-step, the process the Board of Trustees goes through to organize a disbursement.

Because all Trust Capital Unit holders become involved with the sale of corpus, these Minutes need to be clear about why decisions are made to reinvest or to share the proceeds. This is a complex event.

### Selling the Corpus

If the Indenture states that when the original corpus is sold, another type of asset can be placed into the Trust, then the Board of Trustees can use this Trust for a car, condominium, vacant land, or collections. Many times, though, the Indenture does not allow that much flexibility. Converting the asset, though, to investments to continue a cash flow to the Beneficiaries is logical, as this is the responsibility of the Trustee, and the corpus is used for the Trust TCU holders.

Assuming the corpus is sold and distributed to the TCU Holders, leaving the Trust vacant of an asset, the TCU holders remain on the Trust, and are recipients of funds due

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to the Trust through disbursement from other sources. For example, the Trust is a Beneficiary of the Management Trust, so when the Management Trust has disbursements, some of the funds flow to Asset Holding Trusts or to Business Trusts. The TCU holders receive their share.

Selling the corpus results in a cash payout to the Trustees and usually occurs only when a Trust is dissolved. More commonly, funds received from the sale of corpus are invested in income-producing ventures for the Asset Holding Trust, and the investment is now the principal of the Trust, and is still corpus.

Also, because the Grantor can decide what is income and what is corpus, some of the profit can become corpus.

To follow the sample Minutes, you need to know the “players.” Here is the Trust Capital Unit Register of Granier Simpson Trust, an Asset Holding Trust managed by the Sherman M. Patterson Family Trust. Refer to Sample Format 44 for the Sherman M. Patterson Family Trust Capital Unit Register.





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### TRUST CAPITAL UNIT CERTIFICATE REGISTER

#### Granier Simpson Trust

As of Date	Holder's Name	Quantity	TCU No.	No. Units Assigned
Dec 7, 06	James Gardener, Grantor	1	1	1
Dec 7, 06	James Gardener, Exchanger	25	2	26
Dec 7, 06	Sherman S. Patterson Family Trust, Trustee	31	3	57
Dec. 7, 06	Katrina P. Aulso, Trustee	20	4	77
Dec 7, 06	Hannah Gardener, Beneficiary	5	5	82
Dec 7, 06	Josh Gardener, Beneficiary	3	6	85
Dec 7, 06	Gary R. Taylor Jr., Beneficiary	3	7	88
Dec 7, 06	Rare Coins Trust, Beneficiary	3	8	91
Dec 7, 06	Fast Car Trust, Beneficiary	3	9	94
Dec 7, 06	Mother's Kitchen Trust, Beneficiary	2	10	96

Because the Sherman M. Patterson Family Trust (SMPFT) is the Trustee, either or both of the two Trustees, Frank C. Ellis and Kriss L. Heff, can attend this Board of Trustees Meeting representing the SMPFT as Trustee.

On this particular Trust, the Grantor, James Gardener, wanted to have a close friend of the family, Katrina P. Aulso, as a Cotrustee. Up to 51% of the TCUs can belong to the

## APPENDIX D

Trustee. Here, they have been divided so Katrina P. Aulso gets 20 TCUs and SMPFT gets 31.

Recapping, the Management Trust (SMPFT) checking account, holds the funds and manages them for the Granier Simpson Trust. Because funds are mingled, the following Minutes must document as much detail of this transaction as possible. Give a copy to the accountant so his or her records may coincide with them.

As an alternative to this process, the Board of Trustees could give \$12,000.00 to each Beneficiary as a gift, lowering the taxable profit, and invest the rest of the funds.

The fiduciary fees collected for SMPFT as Trustee can be used at the discretion of the Board of Trustees for the TCU Holders of this Management Trust.



### MINUTES OF THE BOARD OF TRUSTEES MEETING OF **Granier Simpson Trust**

Date: December 7, 2007  
Time: 7:00 p.m. to 7:30 p.m. via telephone  
Location: Prescott, Arizona/Los Angeles, California  
Subject: Granier Simpson Settlement  
Re: Investments

The following, constituting a quorum, were present at this Board of Trustees meeting: Frank C. Ellis of the Sherman M. Patterson Family Trust, Katrina P. Aulso, James Gardener, Anita L. Willon.

Katrina P. Aulso reported that the net Funds of \$627,450.87 were received from the sale of Granier Simpson Trust residential property. Mr. Ellis asked the Executive Secretary, Ms. Willon, what profit was made on the property. She gave him the following figures:

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### Profit on Residential Property

Name	Service Rendered	Amount	Balance
Property Sale	Granier Simpson Settlement		\$ 627,450.77
Original Corpus	Fair Market Value at time of Exchange	\$330,800.00	\$ 296,650.77

Mr. Gardener, who retained the power to determine investments for the Beneficiaries discussed with the Board of Trustees other property for the Granier Simpson Trust to purchase. After further discussion it was

RESOLVED the Board of Trustees is authorized to purchase a condominium in Westboro, Massachusetts to be used by the Beneficiaries, Hannah and Josh Gardener, while they attend college in the Boston area.

IT WAS FURTHER RESOLVED that Katrina P. Aulso shall have the authority to make the condominium negotiations and she has authority to commit the Granier Simpson Trust for no more than \$400,000.00.

The Board of Trustees noted that \$400,000.00 is more than the original Trust corpus. After further discussion it was

RESOLVED that the \$70,000.00 profit of the residential property of the Granier Simpson Trust is deemed corpus by James Gardener, Grantor, who retained the power to determine income and corpus in the original Declaration of Trust.

Mr. Ellis pointed out that if there is a full disbursement, the following Fiduciary Fees need to be paid:

Fiduciary Name	Percentage	Payment
<b>Distribution</b>		\$ 227,450.77
Sherman M. Patterson Family Trust	2%	\$ 4,549.02
Katrina P. Aulso	1%	\$ 2,274.51
<b>Total Fiduciary Fees</b>		\$ 6,823.52

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<b>Fiduciary Name</b>	<b>Percentage</b>	<b>Payment</b>
<b>Available for Distribution</b>	\$	220,627.25

Mr. Ellis said the Board of Trustees needs to determine if there shall be a beneficial disbursement. The Board members asked Mr. Gardener if he wanted to take a disbursement for his TCUs. After further discussion

IT WAS RESOLVED that James Gardener shall take a disbursement for 10 of his 25 Trust Capital Units.

The Board of Trustees needed to determined the full distribution of the profit before final decisions were to be made. It worked with Table A. Because the corpus remains invested, and the TCUs held by the Trustees were not active, there is no payout to them. Only 29 of the 96 TCUs are eligible for disbursement.

**Table A**

<b>Name</b>	<b>Status</b>	<b>Amount</b>	<b>Balance</b>
<b>TCU Value</b>	<b>Full Distribution Each TCU</b>	<b>29</b>	<b>\$ 7,607.84</b>
Property Sale	Granier Simpson Settlement		\$ 627,450.77
Condominium	Authorization	\$400,000.00	\$ 227,450.77
Fiduciary Fees	Full net amount	\$ 6,823.52	\$ 220,627.25
Dec. 7, 2007	James Gardener, Exchanger	10	\$ 76,078.36
Dec 7, 06	Hannah Gardener, Beneficiary	5	\$ 38,039.20
Dec. 7, 2007	Josh Gardener, Beneficiary	3	\$ 22,823.52
Dec. 7, 2007	Gary R. Taylor Jr., Beneficiary	3	\$ 22,823.52
Dec. 7, 2007	Rare Coins Trust, Beneficiary	3	\$ 22,823.52

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Name	Status	Amount	Balance
Dec. 7, 2007	Fast Car Trust, Beneficiary	3	\$ 22,823.52
Dec. 7, 2007	Mother's Kitchen Trust, Beneficiary	2	\$ 15,215.68
Possible	Total Funds Distributed	29	\$ 220,627.32

After reviewing these numbers, Mr. Gardener decided the proposed beneficial distribution was too generous, and funds are better used if they were either reinvested, or applied toward tuition. After further discussion it was

RESOLVED \$100,000.00 of the profit from the sale of the Granier Simpson residential property shall be invested, and the remaining distribution is as follows:

**Table B**

Name	Status	Amount	Balance
TCU Value	Full Distribution, Each TCU	29	\$ 4,159.56
Property Sale	Granier Simpson Settlement		\$ 627,450.77
Condominium	Authorization	\$400,000.00	\$ 227,450.77
Investments	Partnerships and Mutual Funds	\$100,000.00	\$ 127,450.77
Fiduciary Fees	Full net amount	\$ 6,823.52	\$ 120,627.25
Dec. 7, 2007	James Gardener, Exchanger	10	\$ 41,595.60
Dec 7, 06	Hannah Gardener, Beneficiary	5	\$ 20,797.80
Dec. 7, 2007	Josh Gardener, Beneficiary	3	\$ 12,478.68

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<b>Name</b>	<b>Status</b>	<b>Amount</b>	<b>Balance</b>
Dec. 7, 2007	Gary R. Taylor Jr., Beneficiary	3	\$ 12,478.68
Dec. 7, 2007	Rare Coins Trust, Beneficiary	3	\$ 12,478.68
Dec. 7, 2007	Fast Car Trust, Beneficiary	3	\$ 12,478.68
Dec. 7, 2007	Mother's Kitchen Trust, Beneficiary	2	\$ 8,319.12
<b>Total Funds Distributed</b>		<b>29</b>	<b>\$ 120,627.24</b>

IT WAS FURTHER RESOLVED that half the funds for Hannah Gardener shall be applied to medical college tuition for 2008 and in the meantime shall be held in a Certificate of Deposit to be determined by the Board of Trustees.

IT WAS ALSO RESOLVED that funds for Josh Gardener and Gary R. Taylor, Jr. shall be applied after consultation with their parents.

The Trustees noted that disbursement has been changed and so the fiduciary fees have changed. After discussion it was

RESOLVED to apply the following number for fiduciary payments:

<b>Fiduciary Name</b>	<b>Percentage</b>	<b>Payment</b>
<b>Distribution</b>		\$ 127,450.77
Sherman M. Patterson Family Trust	2%	\$ 2,549.02
Katrina P. Aulso	1%	\$ 1,274.51
<b>Total Fiduciary Fees</b>		\$ 3,823.52
<b>Available for Distribution</b>		\$ 123,627.25

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IT WAS FURTHER RESOLVED to have the account management rework and verify these numbers and the Board of Trustees will review them again.

There being no further business before the Board, the Trustees instructed the Executive Secretary to enter these proceedings into the Trust Minute Book.

For the Board of Trustees	
Frank C. Ellis as Trustee for Sherman M. Patterson Family Trust	Katrina P. Aulso, Trustee
Anita L. Willon, Executive Secretary	



## Appendix E

### **Manager Meetings and Reports**

In this Appendix are three different General Manager Meeting Reports. Each one shares significant information about managing property in a Trust Group. The emphasis here is on communication.

#### **No Quorum Required**

Events displayed in these formats are common. What makes them different from a Board of Trustees Meeting is only one Trustee. Without the minimum needed Trustees, there can be no official resolutions. A quorum is two or more Trustees, as set in the Trust Indenture.

#### **No Trustees Required**

A Trustee does not need to attend every meeting, but those meetings where discussions affect others in the Trust group need documentation. For those not attending, receiving a copy of the report keeps them up-to-date.



### **Sample Format 23 - Reevaluation of Property**

This is a condensation of several property issues common to a Trust Group and shows you decisions made to improve a vacant lot.





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### **MINUTES OF THE GENERAL MANAGER'S MEETING FOR Canton Jefferies Trust**

Date: April 10, 2005, 4:30 p.m.

Location: Canton, Ohio

Subject: Reevaluation of property

The following were present at this General Manager's meeting: Joseph Allen, George Allen, Darren Portinkin.

George Allen reported that before transferring the land into the Canton Jefferies Trust, several people in the Paradise Venture development proposed getting a water survey. This happened about six months ago. The survey, recently completed, points to several areas where wells exist. The Canton Jefferies property has a potential well in the northeastern corner of the property.

Mr. Portinkin asked the cost of digging a well. George Allen said it averages about \$100 per foot, and this depends on the quality of the ground. Joseph Allen asked how long it takes. George Allen said, again, it depends on the quality of the land. Mr. Portinkin asked if there could be a group endeavor to hire a company to do the digging, and does this lower the cost? George said he would look into it.

Joseph asked how much does finding water increase the value. George said it at least doubles it, and it depends on other variations with bordering property. Buyer interest increases when water is present.

George said if the land value triples within the next couple of years, he would like it sold and the funds invested for his daughters education. Mr. Portinkin said this is a possibility, but he needs to review other choices at the to see if there is better growth potential to reinvest part the funds into more vacant land.

The meeting ended at 5:10 p.m.

Present:

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George Allen, Grantor and Executive Secretary

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Darren Portinkin, Trustee

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Joseph Allen, General Manager

cc Karen Rosencroft, Trustee

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### **Sample Format 24 - Home Improvement and Repairs**

One of the biggest confusions in real estate is the difference between improvements and repairs. One is an expense taken from rents collected, and the other comes out of corpus. Here is what the experts say about it.



#### **GENERAL MANAGER'S MEETING OF Dawson Trust**

July 31, 2007, 4:30 p.m.

Canton, Ohio

Subject: Expenses of Home Improvement and Repairs

The following were present at this General Manager's Meeting: Joseph Allen, George Allen, Karen Rosencroft, Sandra Jay Allen.

Karen Rosencroft stated the Dawson Trust Board of Trustees needs to have periodic reports about the residential property, and presented the attached sample for the Trustees to review.

The Trustees reviewed the difference between Home Improvements and Repairs, and per the legal commentary found in a book titled *Trust Functions*, American Institute of Banking (1927), also edited for ease of understanding, most of the information is as follows:

The question of the Trust management of real estate, either originally received or subsequently gained, presents some interesting phases. Because of its odd character, give special attention to real estate and the improvements on it. The first duty of the Trustee is to rent the property for the best rent obtainable from a responsible tenant. If the Trust is of indefinite duration, as, for instance, during the lives of the widow and the children of the decedent, the Trustee may make a lease for almost any reasonable period. If, the Trust has a specific end date, the period of the lease should not be too extended.

If a lease is a reasonable period and if a Beneficiary dies<sup>137</sup>, the courts hold the lease is binding on the remaindermen<sup>138</sup>. Out of the gross rents received, the Trustee pays taxes, water rents, and other public charges. Also, he or she pays the costs of repairs and insurance against loss by fire and other casualties. It is the duty Management which holds preserve the property for the remaindermen and not suffer it to decline or depreciate.

Difficulties arise about whether fixing a property is a “repair” or an “improvement.” If a “repair,” it is payable out of income; if an “improvement,” payment is from the principal or the corpus of the Trust. New roofs and replacing old plumbing with new are examples of repairs, whereas the laying of new roadways and sewers in front of said property are examples of “improvements.” Some courts decided replacing heating units and resulting upgrades throughout the home of obsolete and inadequate heating is an improvement, chargeable against the corpus of the Trust. Some courts have declared this replacement is a repair, chargeable only to the income of the Trust. In some states, the rule is, if the improvement is not likely to continue beyond the life of the life Beneficiary<sup>139</sup> the cost should be borne by him. If there is destruction by fire or other casualty of the real estate, the Trustee uses the funds of the insurance to make repairs as part of the corpus of the Trust.

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<sup>137</sup> Usually, this would be the Grantor.

<sup>138</sup> Remaindermen: Last Beneficiaries to receive proceeds from the Trust, and the Beneficiaries who receive the corpus when the Trust contract has completed.

<sup>139</sup> Living/Statutory Trust.

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There being no further business to come before the board, the Trustees directed the Executive Secretary to enter these proceedings into the Trust records, and the meeting was adjourned.

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Joseph Allen, General Manager

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George Allen, Executive Secretary

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Karen Rosencroft, Trustee

Attachment

cc Sandra Jay Allen, Caretaker

Darren Portinkin, Trustee

## Dawson Trust

### Property Expenses

Date	Work Description	COST		R	I
		Capital	Yearly Maintenance		
3/10/04	Replace toilet in master bedroom bathroom	\$750.00		✓	
6/25/04	Repair linoleum kitchen floor	\$500.00		✓	
8/30/04	Remove dead tree stump in front yard	\$200.00		✓	
11/6/04	Replace water heater	\$1,200.00		✓	
4/1/05	Replace shingle roof with tile	\$3,000.00		✓	
4/10/04	Find new gardening company		\$2,000.00		
	Pool Service and supplies		\$22,000.00		
	Household cleaning service		\$1,500.00		
6/10/05	Remove wall between 2 small bedrooms	\$2,200.00			✓

Totals	\$7,850.00	\$25,500.00
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### **Sample Format 25 - Retained Powers, Property Loans**

This Minute is converted from a meeting where the Board members discussed the retained powers of the Grantor and the issues about residential property financing.



#### **MINUTES OF THE GENERAL MANAGER'S MEETING FOR George M. Pastiel Trust**

Date: May 16, 2007, 2:00 a.m.

Location: West Los Angeles, California

Subject: Setup and Retained Powers

The following were present at this Board of Trustees meeting: Trustee, Rose P. Marion, James L. Sorrel, Kristine A. Pelleno, Marion Sampson, Jefferson L. Davorin.

Ms. Marion explained that Corrin Elson, the other Cotrustee, was unable to make the meeting now.

Ms. Pelleno asked about financial accountability. Mr. Sorrel explained she will get a monthly "line-item statement" from Trevor Management. It holds funds for several Asset Holding Trusts. The report lists money that comes into George M. Pastiel Trust, and expenses paid.

Ms. Pelleno asked about selling the home. Mr. Sorrel explained if, for some reason, the Board of Trustees allows taking the home out of Trust, she can put it back in her name. The Beneficiaries would need to agree to this. Ms. Pelleno can then sell it, wherein the funds revert to her and any taxes and expenses due are her responsibility. The home can be sold in Trust, and the funds go into the Trust to distribute per Ms. Pelleno's decisions, as this is her retained power. Funds may be reinvested in other enterprises to produce a cash flow, or another home can be bought.

A discussion about legal matters arose. Mr. Davorin reported about his dealings with the IRS and the legal details and procedures. Mr. Davorian asked about payment of taxes. Mr. Sorrel gave him Publication 17 to review, outlining the part where the Beneficiary pays the tax on funds received.

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At this point Ms. Pelleno mentioned there is a balloon payment due early next year on the property mortgage. She plans to refinance and combine loans then. Ms. Marion said that although the paperwork signed has placed the property in Trust whether or not it is recorded at the county, she will send it after the refinancing is complete. Further, she needs to review the county format to see what other paperwork is necessary.

Mr. Davorin mentioned because the property is not local, and the Trustees cannot easily get to it, it is best if a Cotrustee lives near the San Jose area of California. Ms. Sampson and Ms. Pelleno said they would review who might be suitable for this position in their area.

There was no more business discussed, and the meeting was adjourned.

Marion Sampson, General Manager	Jefferson L. Davorin, Trustee
Rose P. Marion, Executive Secretary	

cc Kristine A. Pelleno, Grantor  
James L. Sorrel, Trustee Trevor Management  
Corrin Elson Trustee, George M. Pastiel Trust and Trevor Management





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## Appendix F

### **Banking**

The interface between your Trust and the world is the bank account. Until your Trust can transact business with third parties, all you have is a pile of paper creating potential, but no action.

### **Handling Financial Interface**

There is nothing complicated about opening a bank account, except a Trustee's understanding of how banking and Trusts work. This Appendix is about getting a solid grasp of how to interact with the bank, and for that matter, any financial organization.

### **Opening Bank Accounts**

The documents presented here are used to open bank accounts and to update these accounts when there is a change of Trustee or a change of a secondary signer, such as an account manager, or the Executive Secretary if that person can be a second signer on the bank account.

After the Banking Minutes and Certification of Trust, along with other paperwork needed are ready, a photocopy of them is certified by the Executive Secretary. The copies are given to the financial institution.

The financial institution needs the information contained in these Minutes to know who has the authority to open the bank account.

These documents are not only of benefit to the Bank, but to the Board of Trustees to establish the agreement between it and the bank that this is a Trust account, and it does not belong, personally, to the Trustees.



### **Sample Format 26 - Banking Resolution Minutes**

These Banking Minutes evolved over several years into this sophisticated format. We give you the version where the signatures are updated, because you get the benefit of both the initial Minutes and the updated ones. To convert these to the initial Minutes,

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when the checking account is first opened, edit out the reference to the change of signatures, checking account number, and the statement of updating the banking paperwork.

### **Transaction Authority**

Included in this Banking Minute is the authority for the Trustees to engage in a long list of transactions, including opening a merchant account. This addition to the original Minutes occurred when a bank would not allow a merchant account because it was not included in the Banking Resolution. If you believe this need not be part of your Trust, delete the reference.

### **Signatures**

There are various combinations of signatures included in this version. Both Trustees have signature power, and alternate signatures include both the Executive Secretary and the Account Manager. It is up to the Board of Trustees to decide who should sign the checks. In these Minutes, it states one signature must be a Trustee. In some Banking Resolutions, only Trustees can sign.

### **Remember, the Grantor can never sign.**

Because of the wording in the Trust Indenture, the bank signatures must comply. That is, if two must sign, then one must be a Trustee, or it may be that only Trustees can sign checks.

Keep the original Minutes in the Trust book. Present only a photocopy to the banking personnel.

### **Bank Legal Departments**

Sometimes, the legal department needs to review the Banking Resolution. That department may or may not like the one your Trust presents. The one following has passed many tests, but it does not mean that all legal departments accept it. It has been rejected too. It does not have anything to do with the Minutes; it has to do with the banks' legal departments and their preferences.

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MINUTES OF THE  
TRUSTEE MEETING OF  
**Allen-Jay Family Trust**

Dated: August 1, 2006  
Location: Canton, Ohio  
Subject: Banking Resolution  
Re: Update of Banking Paperwork  
Change of Signatures  
Checking Account No. 008-565466-02  
Jackson-Olson Federal Bank

The Board of Trustees convened on this date. The following were present and represented a quorum: Darren Portinkin, Karen Rosencroft, George Allen, Joseph Allen, Terry Baker.

A discussion ensued concerning the banking policy of Allen-Jay Family Trust. It was

RESOLVED Terry Baker, the Account Manager, is added to the signature card at the Jackson-Olson Federal Bank.

IT WAS FURTHER RESOLVED that Darren Portinkin and Karen Rosencroft, Trustees of Allen-Jay Family Trust, are herein fully authorized by the Board of Trustees to select and make application to any bank or financial institution for the purpose of establishing one or more checking and/or savings accounts in the name of this organization. The Trustees are authorized to make deposits, withdrawals, write checks, investment transactions and maintain such accounts without further action of the Board of Trustees.

IT WAS ALSO RESOLVED the bank or financial institution is hereby authorized to pay out the funds of this organization as directed by the authorized signator(s) without further authorization from the Board of Trustees, whether such directives call for disbursements in cash to the bearer or to the order of any third party.

After further discussion it was

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RESOLVED that a member, so named herein, of the Board of Trustees is hereby authorized to open merchant accounts. The Board of Trustees may from time-to-time borrow money from financial institutions for and on behalf of the Allen-Jay Family Trust. Only when such application is ratified by current resolution of the majority of the Board of Trustees of the Trust, shall such borrowing be authorized. The loan duration, interest rate, terms and conditions may be what the Board, having such authorization deems expedient. Evidence of such indebtedness is created by executing and delivering in the name of and on behalf of this Trust a promissory note, a judgment promissory note or other like obligations of the Trust, signed in the name of this Trust by the authorized signatures designated below. The Board is authorized to secure loans with Trust property only per the terms of the Trust Indenture.

The tax EIN is 94-0384689

The following people are authorized to sign checks or withdrawals from any accounts created with the selected bank(s) or institutions(s) with two (2) signatures being required, one (1) must be a Trustee:

Darren Portinkin, Trustee

Authorized Signature \_\_\_\_\_

Karen Rosencroft, Trustee

Authorized Signature \_\_\_\_\_

George Allen, Executive Secretary

Authorized Signature \_\_\_\_\_

Terry Baker, Account Manager

Authorized Signature \_\_\_\_\_

This Banking Resolution shall remain in full force and effect unless or until canceled or modified by the Board of Trustees. If any changes affect any banking and/or investment arrangements, an updated copy of the Banking Resolution will be presented to the bank.

Darren Portinkin, Trustee	George Allen, Executive Secretary
Karen Rosencroft, Trustee	

### Alternate for One Signature on Checking Account

Some banks will not accept documents on which two (2) signature are required. The following has been successfully used:

INSERT AFTER The tax EIN is NN-NNNNNN (Put in EIN Number)

Mr. TRUSTEE'S NAME stated that NAME OF BANK will not accept responsibility for two (2) signatures, and it is in the Declaration of Indenture that two (2) signatures are required on all financial documents. After further discussion it was

*RESOLVED for the purposes of NAME OF BANK, one (1) signature is required on all financial transactions.*

*IT WAS FURTHER RESOLVED that although one (1) signature is required on all financial documents for NAME OF BANK, two (2) Trustees will sign all financial documents to be in alignment with the NAME OF THE TRUST Declaration of Indenture. NAME OF BANK is not responsible for two (2) signatures.*

*IT WAS ALSO RESOLVED the following NUMBER OF TRUSTEES are authorized to sign checks or withdrawals from any accounts created with NAME OF BANK.*

Also, put the name of the bank on the subject line of the banking Minutes.

### Sample Format 27 - Certification of Trust

This format is taken from one of the banks to which our Trustees submitted the Banking Resolution. It is also based on the California Probate Code §18100.5, shown as Sample Format 28 in this Appendix section.

We always submit this with the Banking Resolution, even though most banks have their own version they want signed. Read this one thoroughly before opening an account at

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any bank, because the bank's form may need to be edited to be in conformity with the Trustee's duties and obligations of the Trust Indenture.

### **Power of Attorney**

For example, many banks have different paragraphs in reference to the Trustee's power of attorney. We have had some banks reject paperwork because the Trustee has an unlimited Power of Attorney on the Bank's form. Check your Trust Indenture to be sure the Trustee cannot give away his or her Trusteeship on a whim.

### **Summary**

The Certification of Trust is a summary of the major points of the Trust Indenture. It allows the Trust Indenture to remain private, whether or not the Indenture is Statutory or Common-Law.

The banks need to be assured the Trustees have the powers outlined, and that a Trust Indenture does exist. They do not have the authority to, in California, to ask for the entire Indenture, but as third parties they have a right to know your Trust is a legal entity.

The great benefit of a Certification of Trust is your Indenture remains private and so do your Beneficiaries.



## Certification of Trust

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### Allen-Jay Family Trust

The undersigned hereby certify:

We the undersigned, are all of the currently acting Trustee(s) of the *Allen-Jay Family Trust* ("Trust") and each of us ("Trustee") has accepted appointment as Trustee and is duly acting as Trustee of the Trust. This Certification of Trust is given by each Trustee voluntarily, and under penalty of perjury, intending the facts set forth herein are relied upon by:

Name of Bank: \_\_\_\_\_

I. Trust Provisions

- A. The Trust is in existence as of this date and is evidenced by a Trust Instrument executed on August 31, 2004.
- B. The name of the Trust Grantor is: Joseph Allen.
- C. The names, addresses, and telephone numbers of each currently acting Trustee are:

Darren Portinkin	Karen Rosencroft
3295 Sweetzer Avenue, Apt. 48	495 Elvira Street
Canton, Ohio 50994	Canton, Ohio 50996
(555) 687-3299	(555) 688-3386

- D. The powers of the Trustee include the power to do or perform all of the acts and things on behalf of the Trust, as set forth in Paragraph II, below.
- E. This is an Irrevocable Trust.



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- F. The Trust instrument requires the signature(s) of two (2) members of the Board of Trustees, one (1) of whom must be a Trustee, as evidenced by the attached Banking Resolution Minutes of the Trust.
- G. The Taxpayer Identification number of the Trust is: 94-0384689.
- H. Title to Trust assets shall only be maintained in the name of the Trust, and *not* in the name of the Trustee.
- I. The Trust has not been revoked, modified or amended in any manner which would cause the representations contained in this Certification of Trust to be incorrect. This Certification of Trust is being signed by each currently acting Trustee of the Trust. Trustee acknowledges and agrees that Company may require Trustee to provide copies of excerpts from the Trust instrument and amendments which designate the Trustee and confer upon the Trustee the power to act in transactions involving the Company (this may include, but is not limited to, pages which contain the name of the Trust, the designation of the Trustee, and the signature of the person creating the Trust). The attached pages(s), if any, reflect true and correct copies of applicable portions of the current Trust instrument and any amendments(s).

### II. Power of Trustee

Trustee, for and on behalf of the Trust, is authorized and empowered on behalf of the Trust to do or perform all of the following, and to exercise such other Trustee powers as may be conferred from time to time by law:

- A. Deposit:
  - 1. Enter into deposit, safe deposit box, electronic fund transfer, and other financial services agreements with the Bank with respect to Trust assets.
  - 2. Deposit funds and maintain Trust property with the Bank, including deposits in an amount which may exceed the maximum FDIC insurance coverage, without collateralization by the Bank.
  - 3. Withdraw or transfer Trust assets from the Bank

III. Investment:

- A. Hold and invest Trust assets with the Bank or with an Affiliate in any kind of property, whether real, personal or mixed, including but not limited to, shares of investment companies registered under the Investment Company Act of 1940 (e.g., mutual funds).
- B. Enter into transaction with Bank affiliates, including without limitation, both purchases and sales of Corporate Stocks, U.S. Government Securities, Unit Investment Trusts, U.S. Agency Securities, Municipal Bonds, Corporate Bonds, Mortgage Backed Obligations, Insurance Products, Mutual Funds, Put and Call Options, Warrants/Rights, and Precious Metals (collectively, "Investments").

IV. Borrowing:

- A. To borrow money from the Bank in any amount.
- B. To assign or pledge Trust assets as collateral for a loan -- requires two (2) Trustee signatures.
- C. To guarantee and/or secure the obligations of others to the Bank, including any current and future obligors or guarantors, on a loan.

V. Attorney-in-Fact and Agent:

Trustees have limited authority to appoint attorneys-in-fact and agents to take any and all actions with respect to Trust assets, including, without limitation, establishing and administering deposit accounts, loans, investments, safe deposit boxes, electronic fund transfers, and other financial service agreements.

VI. Changes in Trust

The Trustee will provide to Company written notice prior to any termination or revocation of the Trust or prior to the transfer from the Trust of any Trust asset upon which Company may be relying for repayment of any Trust or other indebtedness to Company. The Trustee agrees to provide Company with reasonable advance notice of any amendments made to the Trust, any change in Trustee, or any other event which might affect any right, duty or authorization of any person (including Company) with respect to the Trust.

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VII. Miscellaneous:

The persons named on page I are the duly appointed and acting Trustees of the Trust and are duly authorized to act on behalf of the Trust in the manner described above. The Trustees have had an opportunity to obtain advice of counsel to determine their powers as Trustees to make this Certification and to enter into the transactions for which the Certification is given. This Certification of Trust is a true and accurate statement of the matters referred to herein. The Trustees have read the Trust instrument and all of its amendments (if any).

Each of the undersigned declares under penalty of perjury under the laws of the State of Ohio that the foregoing is true and correct.

<i>X</i>	
Darren Portinkin, Trustee	Date
<i>X</i>	
Karen Rosencroft, Trustee	Date

**Sample Format 28 - Probate Code<sup>140</sup> §18100.5 California**

It is important to know the details of the law when dealing with financial institution. You will note ¶H addresses the issue of privacy.

Reformatted and edited for ease of reading. Please check with the Probate Code [or other equivalent code] of your state for complete wording.

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- I. 18100.5. Certification of Trust; contents; Trust document excerpt copies; certification reliance; liability; recordation:
  - A. The Trustee may present a certification of Trust to any person instead of providing a copy of the Trust instrument to prove the existence or terms of the Trust. Delivering a Certification of Trust is voluntary, or the Trustee may provide a copy at the request of the person with whom the Trustee is dealing.
  - B. The Certification of Trust may confirm the following facts or contain the following information:
    1. The existence of the Trust and date of execution of the Trust instrument.
    2. The identity of the Grantor or Grantors and the currently acting Trustee or Trustees of the Trust.
    3. The powers of the Trustee.
    4. The revocability or irrevocability of the Trust and the identity of any person holding power to revoke the Trust.
    5. When there are multiple Trustees, the signature authority of the Trustees. Identify whether all, or fewer than all, of their need to sign to exercise various powers of the Trustee.

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<sup>140</sup>

The Probate Court in your state may use a different name. See “Probate Court” in the Glossary or alternate names.

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6. The Trust Identification Number, whether a Social Security number or an Employer Identification Number (EIN).
  7. How to list title to Trust Assets, for example, if title includes the Trustees' names, or whether title is only in the Trust name.
  8. The legal description of any interest in real property held in the Trust.
- C. Statement about:
1. The Trust has not been revoked, changed, or amended in any manner to cause the representations contained in the Certification of Trust to be incorrect.
  2. All signatures shown are the currently acting Trustees of the Trust.
  3. Acknowledged declaration signed by all currently acting Trustees of the Trust.
  4. Whether the currently acting Trustees are recorded in the office of the county recorder at the location of the real property.
- D. The Certification of Trust may, but is not required to, include excerpts from the original Trust documents, any amendments as well, and any other documents evidencing, or about the succession or successor Trustees. The Certification of Trust is not required to contain the dispositive terms of the Trust which set forth the Trust Estate's distribution.
- E. The person asking for the Certification of Trust may ask for the documents about the pending transaction or matter:
1. Copies of relevant excerpts from the original Trust documents.
  2. Amendments to it, and any other documents giving evidence, or about the succession of the Trustee or confer on the Trustee the power to act in the pending transaction, or both.

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3. Nothing in this section intends to imply a duty to provide the dispositive terms of the Trust or the entire Trust and amendments to it.
- F. A person who acts in reliance on a Certification of Trust without knowledge the representations contained in it are false is not liable to any person for so acting. A person who does not have knowledge of the facts contained in the Certification of Trust are untrue may assume without inquiry the existence of the facts contained in the Certification of Trust. There is no inference of actual knowledge because a person uses or relies on the Trust Certification. Any transaction, and any lien created by it, entered by the Trustee and a person acting in reliance on a Certification of Trust will be enforceable against the Trust Assets. If the person has knowledge the Trustee acts outside the scope of the Trust, then the transaction is not enforceable against the Trust assets. Nothing contained herein limits the rights of the Beneficiaries of the Trust against the Trustee.
- G. The protection provided by Section 18100 continues even if a person does not require a Certification of Trust. The failure to demand a Certification of Trust does not infer failure to act in good faith. Nothing in this section intends to create or imply a person is liable for acting in reliance on a Certification of Trust if the requirements of this section are not satisfied.
- H. Except when requested by a Beneficiary or for litigation about a Trust and subject to the terms of subdivision (E):
1. Any person making a demand for the Trust documents besides a Certification of Trust to prove facts set forth in the Certification of Trust acceptable to the third party will be liable for damages.
  2. Damages include attorney's fees incurred because of the refusal to accept the Certification of Trust, instead of the requested documents, if the court decides the person acted in bad faith in asking for the Trust documents.
- I. Any person may record a Certification of Trust about an interest in real property at its county location. The county recorder will impose

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any fee prescribed by law for recording that document to cover all costs incurred by the county in recording the document. The recorded Certification of Trust is public record of the real property involved. This subdivision does not create a requirement to record a Certification of Trust with any transfer of title of real property involving a Trust.



### **Sample Format 29 - Opening a Bank Account**

After experiencing opening a Trust bank account many times, and then helping others do the same, simplifying matters through the following Policy and Procedure became necessary. Although the steps are all here, an experienced Trustee needs to either accompany a new Trustee to help him or her in this process, or be ready by the telephone to assist with any unusual requests by the bank.

Sometimes, banks need certain parts of the Indenture given to them, and sometimes the personnel ask questions a new Trustee may be unsure about what is a proper response.

#### **Unfamiliar Bankers**

We never expect to open a bank account the first time. We deliberately choose banks who do not know the Grantor or the Trustees. We do not want banking personnel connecting the Trust bank account to any other accounts in the bank the Trustees or the Grantor may use. Some banks string all Social Security Numbers together, and do not differentiate between a Trust account and a personal account. The Irrevocable Trust belongs to itself and legally is a separate entity.

Because the banking information packet taken to open an account has several papers, present them one at a time in response to the person assisting you to open the account, or he or she may get overwhelmed. Do not assume this new account manager has experience opening a Trust account. Also, do not be alarmed if he or she consults with a manager, or sends documents to the legal department. This is all part setting up a bank account.

#### **Several Banks**

On your venture to find a compatible bank, you may go to two or three banks before you have enough experience to say the right thing at the right time, and the bank you visit loves your paperwork. Because of this possibility, take your time, plan to have lunch on the Trust with your Cotrustee, enjoy the experience and the adventure. Oh,

also, bring the check for the first deposit. It should come from the Grantor, a third party made out to the Trust, or one of the Trustees. The larger the amount, the easier to open the account.

This venture to different banks, and talking to various bank employees, gives you needed banking experience. If the paperwork is rejected, it does not mean you did anything improper, or that the paperwork is insufficient. The exercise, though, is absolutely necessary as part of Trustee training. By the way, a Trustee is always in training.



### **Policy:**

The purpose of an Irrevocable Trust is to insure asset protection, lessen the tax burden to the Grantor, and provide for Beneficiaries.

The Trust documentation and bank interface must reflect that financial responsibility lies with the Trustees.

### **Procedure:**

- The Executive Secretary certifies the following photocopies<sup>141</sup> of documents before the Trustees take them to the bank:
  - First and last page of the Indenture.
  - Current Trustee acceptances.
  - Minutes of the Banking Resolution.
  - Certification of Trust.
  - If applicable to your Trust, create Minutes to establish the fictitious business name prior to opening the bank account. After you get the names, bring both the Minutes and the county or state documents to the bank. If you use the fictitious name on the checks, the bank personnel will need proof the fictitious name was filed with the

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<sup>141</sup> All originals Trust documents are kept in the Trust book or in appropriate files.



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appropriate authorities. Bring the stamped authorization paperwork with you, so you can present it if needed.

- EIN authorization from the IRS. This is obtained through filling out an SS-4 form when the Trust documents are being created. Consult with appropriate professionals to properly fill it out.
- Present the Certification of Trust. If the bank personnel insist on having a photocopy of the Trust Indenture, one of the Trustees makes the following statement, "I cannot give you a copy of the Indenture because it is a private document. Further the Probate Code, Section XX (for your state) states the Certification of Trust is sufficient." Most of the time, the bank will give you a Certificate of Trust suitable to its own format for the Trustees to sign.
- If the bank wants the Social Security Numbers of the Trustees, give them to it.
- If the Certification of Trust does not satisfy the bank, then the Trustees are to leave the bank and go to another one.
- Sign bank signature cards with the title after the name: Darren Portinkin, Trustee
- Make corrections to the signature card by marking "Trust," where appropriate. Most banks have a box to check labeled Trust. If "Business Trust" is listed, check the box, cross out "Business."
- Checks
  - Before going to the bank, meet with the person responsible for the accounting to learn what check types are suitable to the software accounting program used by the Trust. There may be no need to use accounting software at the beginning of a Trust, and so, computer formatted checks may not be needed.
  - Start checks with the number 1000 or more. Some vendors suspect checks with early numbers.
  - Checks need to have two signature lines, whether or not the bank accepts two signatures. One Trustee cannot be the only signer for that Trustee's own safety. It is not a problem if the bank only recognizes one signer and does not care who the other one is. Two signatures on a check indicate responsibility for the action taken, while the bank is

## APPENDIX F

only interested in liability should it miss one of the signatures. Print on the checks, above the two-line signature, "Two signatures required." Even if the bank does not care, vendors and Beneficiaries are likely to notice a signature is missing before depositing the check. Also, if there are two lines for signature, and one line is blank, there will be a pause and probably a phone call to the Trustees before the check is cashed.

- If the Board of Trustees decides to use a fictitious name, then use that name on the checks. It obscures the name of the Trust. Although the Trustees sign, "Trustee" after their name, the name of the Trust remains unknown.
- The address of the checks is the address of the Trust, not one of the addresses of the Trustees. To ensure the maximum privacy, establish a private mail box for the Trust business prior to opening the account. If the Trust has a separate office and its own telephone line, then put that telephone number on the checks. Otherwise, one of the Trustee's telephone numbers can be on the checks. Chose the Trustee who is more knowledgeable about the Trust finances.



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## Appendix G

### Contracts

The subject of contracts is vast. We offer five contracts associated with a Trust, and a Certificate of Trust for Real Estate accepted by Los Angeles County, California. These samples should give you enough information to create or find other contracts as needed.

### Getting in Control

Contracts are not the sole domain of the legal community. Anyone can write a basic contract. Clarity and simplicity are key. Writing your own contract puts you in control. This is the place where you can design the future, for you and for the Trust. Qualifications to write a contract include confidence in writing, the courage to try it, and the ability to use formats and ideas from others.

### Pieces and Parts

Every contract comes together from parts and pieces of various documents gathered along the way of getting the experience. Treat writing a contract like you would any other creative writing project. Make many drafts, and get feedback before you present it to the other person with whom you plan to make a deal. Setting your own price may turn out to be a surprise. The other person may just agree with you, concluding the value stated is enough. Then, you will wonder if you should have asked for more.

### Complex Legalities

Use, consult with and hire professionals to write contracts, including technical legalities. Research their background to ensure whomever you hire has enough experience in the area addressed. When the subject is over your head, consult with others, besides legal professionals, to get a feel for the field.

### Specifics

Wherever specific information is given, e.g., the state name, addresses, legal references, parties' names, dollar values, substitute your own information.



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### **Sample Format 30 - Management Agreement**

The need to authorize formally the Management Trust to act for the Asset Holding Trust, a specific contract is needed. Searching through several legal references did not yield the needed information. Finally, a list of responsibility of the Management Trust for the Asset Holding Trust, combined with paragraphs taken from other documents allowed this Agreement to come into being.

#### **Asset Holding Trust Management**

Here again, only the first and last page prove the authority to third parties. Use this contract when buying and selling real estate. Because the Asset Holding Trust name is recorded at the county for real estate, both the real estate agency and the escrow company needs authorization to send the funds for the Asset Holding Trust into the Management Trust checking account.

In the following example, this Management Contract is for the S.M. Meyers Trust. It is unlikely the equipment is registered under the name of S.M. Meyers anywhere except in the S.M. Meyers Trust book. If there are any financial transactions, handle them by using the Doing Business As (D.B.A.) Lawndale Direct. The Management Trust can assign a specific D.B.A. to use for transactions of an Asset Holding Trust, or can use a D.B.A. for specific transaction types.

Should there be a dispute about ownership, theft of any of the equipment, or other complication involving legalities, this contract becomes key to proving ownership, and should accounting be needed, using the D.B.A. can simplify reports.

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<b>Management Agreement</b>	
<b>CLIENT</b>	<b>MANAGEMENT ORGANIZATION</b>
S. M. Meyers Trust	Allen-Jay Family Trust D.B.A. Lawndale Direct No. 84 492 East Elm Street Canton, OH 50399

**WITNESSED:**

WHEREAS, the CLIENT is in the business of rental, maintenance and repair of precision machine equipment, and CLIENT wishes to delegate business administration. WHEREAS, the MANAGEMENT ORGANIZATION is in the business of providing Trust Administration management services for Allen-Jay Family Trust, and is willing to provide such services for the CLIENT on the terms and conditions from now on set forth:

Therefore, in consideration of the foregoing and in consideration of the agreements hereinafter set forth, the MANAGEMENT ORGANIZATION and the CLIENT agree as follows:

- I. The MANAGEMENT ORGANIZATION is responsible to handle the following areas of asset administration:
  - A. Financial
    1. Fiduciary fees
    2. Payroll or contractor payments
    3. Banking and investment transactions
    4. Lease administration
    5. Collection
  - B. Legal
    1. Correspondence
    2. Filings with county, state and federal agencies

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3. Consultation with legal experts
  - a. Paralegals
  - b. Trust consultants
  - c. Lawyers
4. Research
5. Transactions
  - a. Leases
  - b. Rentals
  - c. Mortgages
  - d. Deeds
  - e. Titles
- C. Tax matters, and dealings with tax authorities
  1. Payroll Taxes
  2. State and Local Taxes
  3. Federal Taxes
- D. Application of passthrough accounting and disbursement methods and procedures.
- E. Control investments to benefit the larger Trust Group known as the Allen-Jay Family Trust.
- F. Trust administration, including, but not limited to:
  1. Board of Trustees meetings
    - a. Location
    - b. Agenda
  2. Hiring, and training of Trustees
  3. Hiring, training and ending of service of administrative personnel

- II. Asset Administration includes:
  - A. Inventory
  - B. Buying and selling of assets
  - C. Repairs and equipment maintenance
  - D. Insurance
- III. LENGTH OF CONTRACT: Ten (10) years from the date as shown below.
- IV. DURATION AND TERMINATION: For good cause, such as death, sale of Trust corpus, any emergency or crises affecting the financial status of the CLIENT, ending of this Agreement by either party needs Sixty (60) days' prior written notice to the other. With written notice of ending, the MANAGEMENT ORGANIZATION will make changes only with the consent of the CLIENT. Termination of this Agreement does not affect or preclude any transaction started before such termination. Prompt delivery of all properties and articles described in Paragraph I to the CLIENT, guardian, heirs, executor, or personal representative after termination, allows for reasonable delay for recordation of titles, deed mortgages, or leases.
- V. POWERS, ACTS, AND OMISSIONS OF THE MANAGEMENT ORGANIZATION: The MANAGEMENT ORGANIZATION agrees to undertake and effect transactions for and at the risk of the CLIENT in such a manner as the MANAGEMENT ORGANIZATION believes advisable without notice and approval by the CLIENT.
- VI. MANAGING FEES: The CLIENT pays the MANAGEMENT ORGANIZATION a quarterly management fee of not less than Five percent (5%) of lease payments for equipment held in the S.M. Meyer Trust. This fee is deductible from disbursements to this Trust.
- VII. FURTHER PRIVACY TERMS: This Agreement protects all the Trust business by the Common-Law privacy rights available in every applicable jurisdiction. The penalty for the release of any information within this Agreement or any related material, anyone responsible will be fined or made party to a tort action for no less than One Hundred Thousand and 00/100s Dollars (\$100,000.00).



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- VIII. **LIABILITY:** The MANAGEMENT ORGANIZATION may not convert any of the properties held in the Trust without unanimous approval of the S. M. Meyers Board of Trustees. The MANAGEMENT ORGANIZATION may not be held liable for any actions which it may perform as MANAGEMENT ORGANIZATION unless the MANAGEMENT ORGANIZATION has been found by a court of competent jurisdiction to have acted outside the scope of the contract, or that it has acted in bad faith in carrying out the duties of this Agreement.
- IX. **EFFECTIVE DATE, ASSIGNMENT, GOVERNING LAW:** This Agreement is binding on acceptance by the MANAGEMENT ORGANIZATION provided, though, the CLIENT may revoke this Agreement without penalty within Five(5) business days after the execution date set forth below. This Agreement may not be assigned by either party without the other party's written consent. This Agreement sets up a contract entered into and governed by the laws of Ohio binding on successors and assigners of the parties previously.

THIS AGREEMENT made and completed by the MANAGEMENT ORGANIZATION and the CLIENT:

Dated: September 10, 2004

<b>CLIENT</b>	<b>MANAGEMENT ORGANIZATION</b>
<b>S. M. Meyers Trust</b>	<b>Lawndale Direct</b>
Signature: Sandra Jay Allen, Grantor	Signature: Darren Portinkin, Trustee

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### Sample Format 31 - Private Contract for General Manager

Sometimes the Grantor becomes the General Manager, or another family member may be more suitable. Always define responsibilities and agree on goals and expectations. A contract is like a fence between good neighbors. It defines boundaries. When dealing with shared resources, assets and investments, take care to make reasonable contracts.

#### Independent Status

This contract is a private agreement. An independent contract is subject to rules of the IRS and the courts which may or may not be applicable to you. For example, being an independent contractor may be more fitting for people in the trade industries. The private status of this contract comes under Article I, Section 10, of the United States Constitution. People who have received this contract often borrow parts of it to make it their own. As you read through it, you will see its uniqueness.



#### Private Contract

##### I. Names

This agreement is between Allen-Jay Family Trust, doing business as Lawndale Direct (CLIENT), and Joseph Allen (CONTRACTOR).

##### II. Privacy

- A. The CONTRACTOR is required to sign an Oath of Privacy for the CLIENT.
- B. Neither CLIENT nor CONTRACTOR will reveal any records about CONTRACTOR or CLIENT, unless on written authorization of the other party, or a court order, as compliance with CONTRACTOR's rights protected by the Ohio Constitution<sup>142</sup>.
- C. The right of privacy is also secured and preserved through Article I, Section 10, of the Constitution for the United States (1787), respectively, where properly applicable, according to conflicts of laws and

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<sup>142</sup> Give article and section numbers along with the date of the constitution for your state.

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principles governed by the 9th and 10th Articles, as well as the Constitution for the United States.

### **III. Services Performed by CONTRACTOR**

- A. Research all possible avenues to increase the cash flow for the benefit of the Beneficiaries and advise the Board of Trustees about investment opportunities gained from it.
- B. Hire, supervise and terminate contractors or employees of the CLIENT.
- C. Manage the needs of CLIENT's business and assets. This includes, but is not limited to, financial duties, care taking, contracts for both physical and creative needs.
- D. Attend all meetings of the Board of Trustees to present reports and to act as an adviser to the Board of Trustees.
- E. Manage the daily affairs of the Trust. This includes and is not limited to:
  - 1. Review and track financial accounts.
  - 2. Ensuring a cash flow.
  - 3. Correspondence and handling advertising, if suitable. This includes, but is not limited to, artwork, letter writing, producing fliers, placing advertising or legal notices in various mediums such as newspapers, television and magazines.
- F. Prepare periodic written reports or have General Manager Meetings as needed, but not less than twice a year.

### **IV. Time for Performance**

- A. CONTRACTOR begins work on August 31, 2004.
- B. The duration of this contract is for one year from the date as shown in Section IIIA.
- C. CONTRACTOR will devote an average of Three (3) hours per week. This may be extended, but not more than Eight (8) hours per week without written agreement.

## APPENDIX G

- D. This Private Contract automatically renews monthly until renegotiated.
- V. Payment
  - A. CLIENT pays CONTRACTOR Three-hundred and 00/100s Dollars (\$300.00) per month.
  - B. After One (1) year, CONTRACTOR may renegotiate this contract.
  - C. CLIENT pays CONTRACTOR according to the following schedule:
    - 1. Payment on submission of detailed invoice listing work completed, for example, meetings, investment research or property maintenance.
    - 2. Payment within 7 days of receipt of invoice.
- VI. Place of Performance
  - A. Initially CONTRACTOR performs the duties as outlined at the place of the CONTRACTOR.
  - B. The CONTRACTOR may from time-to-time perform duties at the place of the CLIENT.
- VII. State and Federal Taxes
  - A. CLIENT will not:
    - 1. Withhold Social Security and Medicare taxes from CONTRACTOR's payments or make such tax payment on CONTRACTOR's behalf.
    - 2. Make state or federal unemployment contributions on CONTRACTOR's behalf, or withhold state or federal income tax from CONTRACTOR's payments.
  - B. CONTRACTOR is responsible to pay applicable taxes related to performing services under this contract. This includes income, Social Security, Medicare and self-employment taxes.
  - C. CONTRACTOR is responsible to pay all unemployment contributions related to performing services under this contract. CONTRACTOR will refund CLIENT if CLIENT pays such taxes or unemployment contributions.

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D. The CONTRACTOR is not an employee, and CLIENT is not an employer. Further, CONTRACTOR does not elect to fill out a W-4. Should this come into dispute, the following regulations are recited for clarification:

1. IRC section 3402(a)(1): No (federal, state, city or county) municipal corporation will levy or collect or cause to be levied or collected any tax on the income, or any part of it, of any person, resident or nonresident (also known as the "Full Paycheck Law"). Employers are prohibited from taking amounts from pay for federal or state taxes, fees or other charges absent the lawful, knowing, written consent of the employee.
2. 26 CFR §31.3402(p)-1(a) "An employee who wants to enter an agreement for withholding...shall provide his employer with Form W-4 (or its equivalent) for withholding. Providing such Form W-4 will set up a request for withholding."
3. Then, 31 CFR §215.2(n)(1) employers cannot take amounts from the workers' pay for any form of State tax UNLESS the employee VOLUNTARILY elects to have such sums withheld.
4. Pursuant to 26 CFR §31.3402(p)-1(b)(2), either the employer or the employee may terminate the withholding agreement (W-4 or its equivalent) by providing a signed written notice to the other. An employer cannot lawfully take amounts from the worker's pay without the risk of being sued after the worker gives his or her written notice to end the withholding agreement (W-4 or its equivalent)

### VIII. Fringe Benefits

Neither CONTRACTOR nor CONTRACTOR's employees are eligible to take part in any employee pension, health, vacation pay, sick pay or other fringe benefit plan of CLIENT.

- IX. Private Contractor Status
  - A. The parties intend CONTRACTOR to be a Private contractor in performing the services.
  - B. CONTRACTOR has the right to control and decide the methods and means of performing the contractual services.
- X. Other Clients
  - A. CONTRACTOR keeps the right to perform services for other clients.
  - B. Other clients of the CONTRACTOR cannot be in competition with the CLIENT.
  - C. CONTRACTOR is under an Oath of Privacy and cannot disclose specific, private information about the CLIENT, nor the CLIENT's customers.
- XI. Assistants
  - A. CONTRACTOR, at CONTRACTOR's expense, may employ such assistants as CONTRACTOR considers suitable to perform the contractual services.
  - B. CONTRACTOR will be responsible for paying these assistants, as well as any expense attributable to them, including income, Social Security, Medicare taxes, and unemployment contributions. CONTRACTOR will keep workers' compensation insurance for all of its employees.
- XII. Equipment and Supplies
  - A. While CONTRACTOR works at CLIENT's property, CLIENT provides Computer, Computer Software, Printer, and related office supplies.
  - B. Should CONTRACTOR work from his home, CONTRACTOR provides Computer, Computer Software, Printer, and related office supplies.
  - C. CLIENT refunds CONTRACTOR for all out-of-pocket expenses related to work performed, including the current mileage rate for errands and duties performed during responsibilities outlined here.

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### XIII. Dispute Resolution

#### A. Mediation

1. CLIENT and CONTRACTOR agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action.
2. Mediation fees, if any, will be divided equally among the parties involved.
3. Selection of the Mediator occurs by mutual consent of the parties, with the following format.
  - a. Once a party delivers a written demand for a mediation under this Agreement, each party gives to the other a list of three proposed mediators and their respective biographical data.
  - b. Each party has the right to strike two names off the other party's list.
  - c. If the two parties do not consent to mediating the dispute using any one of the named proposed mediators who has not been struck, then the submission choices starts anew. It continues until the parties mutually consent to use a particular mediator.

#### B. Recovery of attorney's fees does not apply, even if attorney's fees would otherwise be available to that party in any such action:

1. If any party begins an action without first trying to resolve a dispute or claim to which this paragraph applies through mediation, or
2. If any party refuses to mediate after a request for mediation has been made.

#### C. THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION BELOW IS INITIALED. Initialing the arbitration provision, however, is encouraged, in part because arbitration is considered by both federal and state codes and

practice as a more efficient method for resolving disputes than is litigation.

- D. Filing a court action to enable recording a notice of pending action for order of attachment, receivership, injunction or other provisional remedies, will not form a waiver or avoidance of the mediation provision.

E. **ARBITRATION OF DISPUTES**

1. CLIENT and CONTRACTOR agree that, except as to the judicial review of arbitration proceedings provided for under Ohio, any dispute or claim in Law or Equity arising between them out of this Agreement or any resulting transaction, not settled through mediation, will be decided by neutral, binding arbitration. Arbitration fees, if any, will be divided equally among the parties involved.
2. Selection of the neutral Arbitrator occurs by mutual consent of the parties, with the following format: Once a party delivers a written demand for an arbitration under this Agreement, each party gives to the other a list of three proposed arbitrators and their respective biographical data. Each party has the right to strike two names off the other party's list. If the two parties do not consent to arbitrating the dispute using any one of the named proposed arbitrators who has not been struck, then the name choices starts anew, and continues until the parties mutually consent to use a particular arbitrator. The person who mediated the dispute may also be selected as the Arbitrator.
3. The Arbitrator will give an award under substantive Ohio law. The parties have the right to discovery under Ohio Code of Civil Procedure,<sup>143</sup> as monitored by the Arbitrator. In all other respects, the arbitration will be conducted under<sup>144</sup> the Ohio

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<sup>143</sup> Put in section number for your state.

<sup>144</sup> Put in the reference section of your state.



## Art of Passing the Buck, Volume II

Code of Civil Procedure. Judgment on the award of the Arbitrator may be entered into any court having jurisdiction. Interpretation of this Agreement to arbitrate will be governed by the Federal Arbitration Act and the applicable Ohio Codes.

4. **EXCLUSIONS FROM ARBITRATION:** The following matters are excluded from arbitration:
  - a. a judicial or nonjudicial foreclosure or other action or proceeding to enforce a deed of Trust, mortgage or installment land sale contract as defined in Ohio Civil Code<sup>145</sup> §:
  - b. an unlawful detainer action;
  - c. the filing or enforcement of a mechanic's lien; and
  - d. any matter that is within the jurisdiction of a probate, small claims or bankruptcy court.
5. Filing a court action to record a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, will not form a waiver or avoidance of the arbitration provision.

### NOTICE

BY INITIALING IN THE SPACE BELOW YOU AGREE TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY OHIO LAW AND YOU GIVE UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW, YOU ALSO GIVE UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE OHIO CODE OF CIVIL PROCE-

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<sup>145</sup> Put in section number for your state.

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DURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

We/I have read and understand and agree to submit disputes arising out of the matters included in the "arbitration of disputes" provision to neutral arbitration.

CLIENT's Initials \_\_\_\_\_

CONTRACTOR's Initials \_\_\_\_\_

XIV. Entire Agreement

- A. This is the entire agreement between the parties.
- B. It replaces and supersedes any oral agreements between the parties, as well as any prior writings.

XV. Successors and Assignees

- A. This agreement cannot be assigned without the express written approval of both parties
- B. If this agreement is assigned, it binds and benefits the heirs, successors and assignees of the parties.

XVI. Notices and Modifications

- A. Modifications must be in writing signed by the party against whom such modification is sought to be enforced.
- B. A notice or modification may be delivered to a party at the address that follows a party's signature or to a new address that a party designates in writing. A notice may be delivered:
  - 1. in person
  - 2. by certified mail, or
  - 3. by overnight courier.
- C. Ending of contract:
  - 1. Each party will give the other Twenty-one (21) days' written notice.

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2. For a lesser or greater termination time, both parties must agree in writing.

### XVII. Governing Law

This agreement will be governed by and construed under the laws of the State of Ohio.

### XVIII. Counterparts

The parties may sign several identical counterparts of this agreement. Any fully signed counterpart will be treated as an original.

### XIX. Waiver

If one party waives any term or provision of this agreement, that waiver will be effective only for the specific instance and specific purpose for which the waiver was given. If either party fails to exercise or delays exercising any of its rights or remedies under this agreement, that party keeps the right to enforce that term or provision only during this contract plus Sixty (60) days.

### XX. Severability

If any court decides that any provision of this agreement is invalid or unenforceable, any invalidity or unenforceability will affect only that provision and will not make any other provision of this agreement invalid or unenforceable and such provision will be changed, amended or limited only to the extent necessary to make it valid and enforceable.

### CLIENT

Allen-Jay Family Trust  
D.B.A. Lawndale Direct  
No. 84  
492 East Elm Street  
Canton, OH 50399  
(555) 659-8493

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Darren Portinkin  
Trustee

### CONTRACTOR

Dated: \_\_\_\_\_

By:

\_\_\_\_\_  
Joseph Allen  
6849 East Lincoln Place  
Canton, Ohio 50402

### **Sample Format 32 - Certification of Trust for Property**

We searched for a document of this nature for years. Feeling that any Trust could be recorded without presenting the entire document, we wondered what would be suitable. In one of our business dealings with a real estate company, it gave us this format for completion for the county. We have updated it and molded it to be more fitting for our uses. You, of course, will do the same, as the formats in Volume II are not cast in stone and are designed to change.

This document gives a summary of the Trustee powers over the property, identifies the Grantor, the Trust name and date of creation.



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RECORDING REQUESTED BY

AND WHEN RECORDED MAIL THIS DEED AND, UNLESS OTHERWISE SHOWN BELOW, MAIL TAX STATEMENT TO:

NAME: Dawson Trust  
c/o Lawndale Direct  
STREET: No. 84  
ADDRESS: 492 East Elm Street

CITY, STATE & ZIP CODE: Canton, OH 50399

TITLE NO. \_\_\_\_\_ ESCROW NO. \_\_\_\_\_

SPACE ABOVE THIS LINE FOR RECORDER'S USE

### Certification of Trust

We declare under penalty of perjury under the laws of Ohio the following are true and correct:

1. The Trust known as Dawson Trust, signed on September 10, 2004, is a valid and existing Trust.
2. The Grantor of the Dawson Trust of the Trust is: Sandra Jay Allen .
3. The names of the currently acting Trustees are: Darren Portinkin, Karen Rosencroft.
4. The Trustees of the Dawson Trust have the following powers (initial applicable lines):
  - a. \_\_\_\_\_ Power to acquire additional property.
  - b. \_\_\_\_\_ Power to sell and execute deeds.
  - c. \_\_\_\_\_ Power to encumber and execute deeds of Trust.
  - d. \_\_\_\_\_ Power to purchase, hold, rent, lease, convey, option, exchange, trade, convert, abandon, improve, repair, manage, create, control, or sell Trust property as public or private sale.

#### Type of Property:

☐ Rental ☐ Vacant  
Land ☒ Residential  
☐ Commercial  
☐ Vehicle ☐ Asset type  
\_\_\_\_\_ ☐ Other  
☒ Update of Trustees to  
referenced title.  
☒ Per Ohio Probate  
Code

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- e. \_\_\_\_\_ To execute and deliver any instruments in writing which the Trustees consider necessary while carrying out Trust business.
- f. \_\_\_\_\_ Other \_\_\_\_\_
5. The Dawson Trust is Irrevocable.
6. The number of Trustees who must sign documents to exercise the power of the Trust are Two (2), whose names are: Darren Portinkin and Karen Rosencroft.
7. Title to Trust assets is to be taken as follows: Dawson Trust.
8. The Dawson Trust has not been revoked, changed or amended in any manner to cause the representations here to be untrue.
9. We are all the currently acting Trustees.
10. We understand that we may be required to provide copies of excerpts from the original Trust documents which name the Trustees and confer the power to act in any pending transaction.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Karen Rosencroft, Trustee

\_\_\_\_\_  
Darren Portinkin, Trustee

**NOTARIZATION ON REVERSE SIDE**

(Notary format not included in this sample)

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### Sample Format 33 - Private Contract for Caretaker

When real estate becomes part of a Trust, preserving it is essential to keep up its value. The people most motivated to do this are the original owners, who have given up title in favor of their Beneficiaries. Most often, this contract becomes suitable to the Grantor or the spouse to become the caretaker of the property.

This contract follows the same format as shown in Sample Format 31 for the General Manager, so we show only the beginning part of the Caretaker Contract.



#### I. Names

This agreement is between, doing business as Lawndale Direct (CLIENT), and Sandra Jay Allen (CONTRACTOR). CONTRACTOR is assigned to perform services for Dawson Trust.

#### II. Performed by CONTRACTOR

- A. Conserve, protect, guard, repair and preserve the residential property located at 6849 East Lincoln Place, Canton, Ohio.
  - 1. Live on the property to prevent vandalism.
  - 2. Handle routine paperwork about maintaining the property, such as
    - a. Garbage Collection
    - b. Gardening
    - c. Pool and other maintenance
    - d. Utilities
  - 3. Insurance
- B. These duties as outlined will not limit the performance of regular caretaker duties. Caretaker agrees that she will always faithfully, industriously, and to the best of her ability, experience, and perform all the duties that may be required of her under the express and implicit terms hereof, to the reasonable satisfaction of the TRUST.

III. Time for Performance

- A. CONTRACTOR begins work on August 31, 2004.
- B. The duration of this contract is for one year from the date as shown in Section IVA.
- C. CONTRACTOR will devote an average of Five (5) Hours a week. This may be extended, but not more than Ten (10) hours per week without written agreement.
- D. This Private Contract automatically renews monthly until renegotiated.

IV. Payment

- A. CLIENT pays CONTRACTOR \$200 per month.
- B. After One (1) year, this contract can be renegotiated.
- C. CLIENT pays CONTRACTOR according to the following schedule:
  - 1. Payment on submission of detailed invoice listing work completed, for example, gardening and maintenance with receipts.
  - 2. Payment within Seven (7) days of receipt of invoice.
- D. Reimbursement of Expenses

The following expenses for the Trust estate will be reimbursed, or a cash advance may be approved by the Trustees:

- 1. Leasing and rentals
- 2. Purchase payments
- 3. Caretaker supplies
- 4. Taxes on Trust assets
- 5. Equipment use and maintenance
- 6. Repairs
- 7. Capital improvements
- 8. Transportation of Trust property



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### **V. Contract Authorization**

- A. The CARETAKER will not have the right to make any contract or commitments for the Trust estate, above the agreed on amount of One Thousand and 00/100s Dollars (\$1,000.00), without the consent of the Trustees.
- B. All money placed into the hands of the CARETAKER for maintenance, repairs and improvement, and the use and expenses of it for the Trust estate, will be accounted for on demand.

### **VI. Place of Performance**

- A. CONTRACTOR will perform the duties as outlined for CLIENT, located at 6849 East Lincoln Place, Canton, Ohio
- B. The CONTRACTOR may from time-to-time perform duties at the place of the CLIENT.

REFER TO SAMPLE FORMAT 31 FOR REMAINDER.



## **Sample Format 34 - Rental Agreement**

This is taken from a standard rental agreement and edited to suit the needs of the Trust.

### **Lending Institutions**

Some lending institutions need to see a rental agreement whether it is the Trust or the Grantor who needs to borrow funds. Further, the IRS is satisfied if the Trust Grantor rents the property placed into Trust.

This Agreement formally sets up the relationship among the Grantor, the Trust and the Trustees, providing another example of how good fences make good neighbors.

After residential property is exchanged into the Trust, create a Rental Agreement.

### **Building Corpus**

This setup allows those with less money to put funds in Trust. Instead of needing a large cash flow to support the expenses of upkeep, the Grantor can put the home in Trust and pay rent. This both builds up corpus in the Trust and allows the Management Trust to handle the appropriate expenses.

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The Agreement is a specific example previously tailored to conditions applying only to this home. The details here are not fitting to other Agreements. Please edit accordingly.



### Parties

Landlord	Tenants
Lawndale Direct 492 East Elm, No. 84 Canton, OH 50399	Joseph and Sandra J. Allen 6849 East Lincoln Place Canton, OH 50402
(310) 915-0135 Voice (310) 398-6370 Fax	(909) 946-4328 Voice (909) 946-7243 Fax

PROPERTY ADDRESS: 6849 East Lincoln Place, Canton, OH 50402

DESCRIPTION OF PROPERTY: Four-bedroom home about 3,000 square feet with a detached separate garage 20-feet by 26-feet to be used as a studio.

1. RENTAL AMOUNT: Beginning August 31, 2004 TENANT agrees to pay LANDLORD \$2,400.00 per month in advance on the 5<sup>th</sup> day of each month. Said rental payment will be delivered by TENANT to LANDLORD or his named agent to the above address. Rent must be received by the 5<sup>th</sup> of each month by LANDLORD, or named agent, to be in compliance with the terms of this agreement.
2. TERM: The property is leased for Ten (10) years, expiring the last day of April 2012, and continues on a month by month basis until TENANT and LANDLORD review this Rental Agreement and come to different terms and understandings.
3. INITIAL PAYMENT: TENANT pays \$2,000.00 as security and the first month rent of \$1,500.00. Said payment will be in the form of cash, personal check or cashier's check due before occupancy

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4. SUBLETTING OR ASSIGNING: TENANT agrees not to assign or sublet the premises, or any part of it, without first getting written permission from LANDLORD.
5. UTILITIES: LANDLORD pays for water. All other monthly maintenance services are the responsibility of the TENANT.
6. PARKING: TENANT may use the driveway and the garage.
7. CONDITION OF PREMISES:
  - a. LANDLORD AND TENANT agree the premises are in need of upgrade and repair. LANDLORD pays for all upgrade and repair on approval of written estimate.
  - b. LANDLORD pays contractor directly or repays TENANT, whichever is easier, for all invoices under \$1,000.00. Invoices over \$1,000.00 LANDLORD pays directly.
  - c. TENANT has inspected the property and premises have been cleaned and all items, fixtures, appliances, and appurtenances are in complete working order.
  - d. TENANT will be responsible for the:
    - i. Cleaning or repair to any plumbing fixture where a stoppage has occurred because of misuse.
    - ii. Repair or replacement of the garbage disposal where the cause has been a result of bones, grease, pits, or any other item which normally causes blockage.
8. CHANGES:
  - a. TENANT will not make any changes to the property without the permission of the LANDLORD. This includes, but is not limited to:
    - i. Installing aeriels, lighting fixtures, dishwashers, washing machines, dryers or other items.
    - ii. TENANT will not change or install locks, paint, or wallpaper said premises.

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- iii. TENANT will not place placards, signs, or other displays in a window or any other place where they can be viewed by other residents or by the public.
  - iv. Home improvements and alterations.
- 9. BAD CHECKS: TENANT will repay LANDLORD for bank charges.
- 10. NOISE AND DISRUPTIVE ACTIVITIES: TENANT, guests and invitees will not disturb, annoy, endanger or inconvenience neighbors, the LANDLORD or his agents, or workers.
  - a. TENANT may not violate any law, nor commit or let waste or nuisance in or about the property.
  - b. TENANT will not do or keep anything on outside public parkway. Visitors and TENANTS cannot park outside property on the public road.
- 11. LANDLORD'S RIGHT OF ENTRY: LANDLORD may enter and inspect the premises during normal business hours and on reasonable advance notice of at least 24 hours to TENANT.
  - a. LANDLORD is allowed to make all changes, repairs and maintenance that in LANDLORD'S judgment are necessary to perform to keep the property in good condition or to increase its value.
  - b. In addition, LANDLORD has all right to enter under Civil Code Section 1954. If the work performed needs the TENANT temporarily leave the unit, then TENANT will leave for this temporary period on being served Seven (7) days' notice by LANDLORD.
  - c. TENANT agrees that in such event that TENANT will be compensated by a matching decrease in rent for those many days that TENANT was temporarily displaced.
  - d. If the work to be performed needs the TENANT to perform certain tasks, then those tasks will be performed on serving Twenty-four (24) hours' written notice by LANDLORD. (EXAMPLE -removing food items from cabinets so the unit may be sprayed for pests)

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12. **REPAIRS BY LANDLORD:** Where a repair is the responsibility of the LANDLORD, TENANT must notify LANDLORD with a written notice stating what item needs servicing or repair.
  - a. TENANT must give LANDLORD a reasonable opportunity to service or repair said item.
  - b. TENANT recognizes that rent will not be withheld unless a written notice has been served on LANDLORD giving LANDLORD a reasonable time to fix said item within the meaning of Civil Code Section 1942. Under no circumstances may TENANT withhold rent unless said item forms a large breach of the warranty of habitability as stated in Code of Civil Procedure Section 1174.2.
  - c. The maximum the LANDLORD is required to spend is \$5,000.00.
13. **DOMESTICATED PETS** are allowed, but the LANDLORD must be told.
14. **FURNISHINGS:** The premises are unfurnished except for the washer and dryer. They will be replaced by the LANDLORD as needed.
15. **KEYS AND STORAGE:**
  - a. Storage privileges for the TENANT are included.
  - b. TENANT received two (2) set of keys to be returned when premises are quit or TENANT will be charged for replacing the locks.
16. **INSURANCE:** TENANT may keep a personal property insurance policy to cover any losses sustained to TENANT'S personal property or vehicle(s).
  - a. It is acknowledged the LANDLORD does not maintain this insurance to cover personal property damage or loss caused by fire, theft, rain, water overflow/leakage, acts of GOD, and/or any other causes.
  - b. It is acknowledged the LANDLORD is not liable for these occurrences. It is acknowledged that TENANT'S insurance policy shall solely indemnify TENANT for any losses sustained. TENANT'S failure to maintain said policy shall be a complete waiver of TENANT'S right to seek damages against LANDLORD for the above stated losses.

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- c. The parties acknowledge that the premises are not to be considered a security building which would hold LANDLORD to a higher degree of care.
- 17. **TERMINATION OF LEASE/RENTAL AGREEMENT:**
  - a. If this lease is based on a fixed term, pursuant to paragraph 2, then at the expiration of said fixed term this lease shall become a month-to-month tenancy on the approval of LANDLORD. Where said term is a month to month tenancy, either party may terminate this tenancy by the serving of a Thirty (30) days' written notice.
  - b. If the property is sold during the lease term, the LANDLORD cannot terminate the lease.
- 18. TENANT must defend LANDLORD from claims arising from TENANT'S USE.
- 19. Hazardous materials are limited to Studio.
- 20. TENANT must keep premises from construction liens.
- 21. Disputes must be resolved first by Mediation per the attached Mediation/Arbitration Agreement incorporated herewith as part of this Agreement.
- 22. Lease is subordinate to any mortgage of the LANDLORD.
- 23. TAXES: Landlord pays real estate taxes and assessments on property.
- 24. TENANT must comply with government regulations.
- 25. **VALIDITY/SEVERABILITY:** If any provision of this agreement is held to be invalid, such invalidity will not affect the validity or enforce ability of any other provision of this agreement.
- 26. **ATTORNEY FEES:** In the event action is brought by any party to enforce any terms of this agreement or to recover possession of the premises, the prevailing party shall recover from the other party reasonable attorney fees. It is acknowledged, between the parties, that jury trials significantly increase the costs of any litigation between the parties.

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27. Jury trials require a longer length of time to adjudicate the controversy. On this basis, all parties waive their rights to have any matter settled by jury trial.
28. **NOTICES:** All notices to the TENANT shall be deemed served on mailing by first class mail, addressed to the TENANT, at the subject premises or on personal delivery to the premises whether or not TENANT is actually present at the time of said delivery. All notices to the LANDLORD shall be served by mailing first class mail or by personal delivery to the manager's apartment or to: Sterling Management, 3435 Ocean Park Blvd., No. 107-422, Santa Monica, CA 90405. Tenant must acknowledge receipt of mail.
29. **ADDITIONAL RENT:** All items owed under this lease shall be deemed additional rent.
30. **ADDITIONAL TERMS:**
31. **ENTIRE AGREEMENT:** The foregoing agreement, including any attachments incorporated by reference, constitute the entire agreement between the parties and supersedes any oral or written representations or agreements that may have been made by either party. Further, TENANT represents that TENANT has relied solely on TENANT'S judgment in entering into this agreement. TENANT acknowledges having been advised to consult with independent legal counsel before entering into this Agreement and has decided to waive such representation and advice. TENANT acknowledges that TENANT has read and understood this agreement and has been furnished a duplicate original.

### In Witness Whereof

Name	Title	Signature	Date
Karen Rosencroft	Trustee for Lawndale Direct		
Joseph Allen	Tenant		
Sandra Jay Allen	Tenant		

## APPENDIX G

No Representation Is Made as to the Legal Validity or Adequacy of this Agreement. If You Desire, Consult with an Attorney Before Entering this Agreement.



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## Appendix H

### Proposals and Exchanges

This set of exchange paperwork evolved over several years. It comes both from formats found in various Common-Law Trusts, and legal forms about buying and selling converted for this specific use.

#### Personally Signed Letter

Some investment companies request the letter from the Exchanger shown as Sample Format 37 naming the Beneficiaries. Because so much information contained on the letter is private, much of it needs to be blocked out. For example, the financial institution does not need to know how many TCUs are exchanged. Mostly it wants to be sure the Exchanger took part in the Trust setup, revealing only one Beneficiary name may or may not be necessary.

#### Surrendering Rights

The exchange or transfer needs clear documentation. The Trustees must be sure the Exchanger knows what he or she is doing, and is clear about consequences. Even though the Indenture should have in it a paragraph about the Grantor knows he or she surrenders all right to the asset, this formal exchange adds a layer of protection to further confirm the intent.

The four parts to the initial exchange are:

- The Exchanger writes a letter to the Trustees asking to exchange assets for TCUs. The letter has within it the following information.
  - Identification of the asset
  - Motive for placing assets into the Trust
  - How many TCUs he or she requests
  - Name of the Trust issuing the TCUs

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- Names of Beneficiaries
  - Fair Market Value of the asset
- The Board of Trustees reviews the letter and approves or disapproves the exchange noting the following in the Minutes:
  - Identification of the asset
  - How many TCUs are approved or a counteroffer
- Bill of Exchange
  - Name of Exchanger
  - Identification of the Asset
  - Amount of approved TCUs
  - Value of the asset accepted
- Asset detail description

These documents remain in the Trust book as part of the original documentation setting up the Trust. Any Exchangers who later join the Trust Group need to follow this format. The Board of Trustees keeps these documents in the same section as the original Exchanger documents.

The fair market value of assets when exchanged provides the basis to calculate long-term or short-term capital gains when the Exchanger takes a large disbursement.

The process for later Exchangers follows the same pattern.



### **Sample Format 35 - Minutes of Exchange**

We start with the Minutes accepting the asset to which the letter from the Exchanger attaches. These Minutes evolved from other Common-Law Trusts and provide acknowledgment by the Trustees of the asset coming into the Trust as well as giving the authority to the Executive Secretary to issue the TCUs.



MINUTES OF THE  
TRUSTEE MEETING OF  
**S. M. Meyers Trust**

Date: September 10, 2004  
Location: Canton, Ohio  
Present: Darren Portinkin, Karen Rosencroft, Joseph Allen, George Allen  
Subject: Large Precision Machining Equipment

The Trustees for S. M. Meyers Trust, an Asset Holding Trust, forming a quorum, called this meeting of the Board to order on this date. Present were: Darren Portinkin, Karen Rosencroft, Joseph Allen, George Allen.

Acting within the powers and authorities granted by the Declaration of Trust, the Board of Trustees accepted a written proposal from Sandra Jay Allen, which is an offer to place property into S. M. Meyers Trust in exchange for 40 TCUs held in reserve by the Trustees. The secretary was told to put a copy of the proposal in the Minute Book, and identify the property found on the attached as Exhibits A and B.

After discussion and consideration of the proposal by the Board, it was:

*RESOLVED the exchange be made after a satisfactory physical inspection  
of the Large Precision Machinery Equipment and supporting machinery by  
a member of the Board.*

Both parties agreed the proposed exchange would not be a sale or a gift, but an equal value tax-deferred exchange. The Secretary was told to issue the TCUs on confirmation of the exchange of the property as described on Exhibits A and B, now incorporated as the Assets of S. M. Meyers Trust.

There being no more business to come before the Board, the Secretary entered these proceedings in the company Minute Book, and the meeting was adjourned.

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Darren Portinkin for Allen-Jay Family Trust Trustee	George Allen, Executive Secretary
Karen Rosencroft, Trustee	



### Sample Format 36 - Proposal to Exchange Property

The following letter outlines the name of the asset, why the exchange is requested, the Beneficiaries and the TCUs for the exchange. This is the first step of the formal procedure for asset transfer into the Trust. Sometimes there can be the initial letter, and then several letters after it between the Board of Trustees and the Exchanger.

#### Lengthy Negotiations

A more lengthy exchange occurs when complicated financial arrangements apply, such as a negotiation for corporate shares in exchange for TCUs. In that case, the cash flow to the Trust needs clarity, and the negotiations may get complex. Instead of one letter from the Exchanger, there may be several documenting the offers and counteroffers between the Exchanger and the Board of Trustees.

When there are mortgages and outstanding loan balances, only the equity, or what has been paid off can be put into the Trust. On the Schedule of Initial Funding, list the full value. On the next line, show the mortgage or loan balance amount.



**Sandra Jay Allen**

6849 East Lincoln Place

Canton, OH 50402

555-403-3328

September 10, 2004

To: Darren Portinkin, Trustee  
Karen Rosencroft, Trustee  
S. M. Meyers Trust  
From: Sandra Jay Allen  
Subject: Proposal to Exchange Property for TCUs  
Re: Large Precision Machining Equipment  
Tools and supporting machinery

After considering the benefits of exchanging property into your organization, I have decided that an exchange of the Large Precision Machining Equipment with supporting tools and machinery for TCUs holds a promise of attractive future benefits for my Beneficiaries. This offer is, therefore, presented.

I herein propose to exchange the property listed on Exhibits A and B for a minimum of 40 Trust Capital Units. Further, I understand that such an exchange is neither a gift nor a sale, but a tax deferred exchange. This means that should I receive a Trust Capital disbursement, or I should sell my Trust Capital Units, I am responsible for lawful taxes.

If this meets with your approval and if, indeed, the Trustees feel that such an exchange creates future profits for the organization, please reply with the direction on how to continue.

Please recognize that I place these assets into S. M. Meyers Trust for the benefit of the following Beneficiaries:

Peter Allen

Tammy Allen

Note: I may recommend to the Board of Trustees that more Beneficiaries may be added later.

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I believe Exhibits A and B include enough description so you may make a proper decision about S. M. Meyers Trust assets.

There are no existing liens against this property. The electrodischarge machine has an outstanding loan balance of \$125,000.00.

The basis in the property for tax considerations is about Two-million One-hundred twenty-five thousand and 00/100s Dollars (\$2,125,000.00). If you need further clarification about this matter, more information will be made available at your request.

Your immediate response will be appreciated.

Thank you.

Sincerely,

*Signature*

Sandra Jay Allen

## **Sample Format 37 - Bill of Exchange**

After reviewing various receipts for exchanges, we designed the wording for this Bill of Exchange. It is a receipt for the assets put into the Trust. Created in duplicate, one original stays with the Exchanger to be used in the future as a deduction against disbursement. With the Trust Certificate identifying the number of TCUs, the Exchanger has enough evidence of his or her rights as a Trust Certificate Holder.

### **Joint Property**

Sandra J. Allen becomes the Exchanger through dividing property listed in the Joint Property Agreement.

Although this Bill of Exchange lists Exhibits A and B, only Exhibit A as Sample Format 38.

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## Bill of Exchange

September 14, 2004

To: Sandra Jay Allen  
 From: The Board of Trustees of  
       S. M. Meyers Trust  
 Subject: Large Precision Machining Equipment

In exchange for 40 TCUs, receipt of which is hereby accepted. Sandra Jay Allen exchanges, trades, conveys and delivers the following described personal property to the Board of Trustees of S.M. Meyers Trust.

*Large Precision Machining Equipment as detailed  
 on the attached Exhibits A and B.*

Exchanger hereby warrants and represents to S. M. Meyers Trust that she is the sole owner of the Property and the title hereby transferred is good. Exchanger further warrants the Property is being exchanged free and clear of any security interests, liens, or other encumbrances except for the electrodischarge machine. The loan balance remains the responsibility of Joseph and Sandra J. Allen.

Exchanger hereby covenants and agrees to defend or indemnify S. M. Meyers Trust or any executors, administrators, and assigns against any title claims asserted on the property.

Exchanger specifically disclaims any expressed or implied warranties of merchantability, fitness for a particular purpose, or condition.

The cash basis of this exchange is Two-million, One-hundred twenty-five thousand and 00/100s Dollars (\$2,125,000.00).

Sandra Jay Allen, Exchanger	Acknowledged as received by the Board of Trustees, for Allen-Jay Family Trust, Trustee
Karen Rosencroft, Trustee	



## **Art of Passing the Buck, Volume II**

### **Sample Format 38 - Asset Exhibit A**

The Exchanger is responsible to describe the asset for the exchange. The Trustees need to be able to claim the asset if it is stolen. For example, if Joseph Allen is on business in China, and a former employee breaks into the work area of the business and hauls off one of the large pieces of equipment, the Trustees need to complete a police report. Where will they get the information? If the equipment had been properly transferred into the Trust, then the information is in the Trust book.

#### **Proper Identification**

Of course, photographs of assets always help. Some Trusts have both lists of assets and photographs numbered to the list. This is especially applicable to jewelry.

In Appendix J you will see other asset inventory formats, including these assets where more information is provided.

#### **Cash Flow**

To review, the equipment listed in Exhibit A is put into the S.M. Meyer Trust as the initial corpus. The Trustees hold the equipment for the Beneficiaries. The equipment is leased by the Business Trust, and the payment for the lease is received by the Management Trust. Funds are then disbursed to the Beneficiaries, or used by the Management Trust as necessary for the benefit of the Beneficiaries.

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**S. M. Meyer Trust****Exhibit A - Equipment****Inventory as of August 31, 2004**

<b>Func- tion</b>	<b>Mfg/Artist/- Description</b>	<b>Model/- Ref.</b>	<b>Date</b>	<b>Qty</b>	<b>\$ Each</b>	<b>Total</b>
Precision groove, holes, fancy cuts	EDM Max/Electro- discharge Ma- chine — 3 to 5 tons, 5 ft. X 4 ft. X 10 ft. high	F394334	Feb. 8, 2002	1	\$ 850,000	\$ 850,000
Turns metal	Porter & Sons/Lathe — 8-ft. Bed, auto chuck	895-8A	Apr 9, 1999	1	\$ 43,000	\$ 43,000
Turns metal	3M/Lathe - 4- ft. Bed, Manual Chuck	98895-4M	Jan 4, 2001	2	\$ 22,000	\$ 44,000
Precision Grinding	Bostonmatic/- HS Super Grind — 6-ft. long, 3-ft. wide, 5-ft. High	PG894A	June 2002, Au- gust 2002, Dec. 2002, March 2003	4	\$ 235,000	\$ 940,000
						\$ 1,877,000

Only Exhibit A is Shown. When Exhibit A and B are totaled, they equal the value of the exchange.

## **Art of Passing the Buck, Volume II**

### **Sample Format 39 - Assignment of Assets**

When assets are not registered or recorded formally with another organization, then we suggest they be assigned to the Trust, using the format Assignment of Assets. This ensures the legality of the ownership, and is equivalent to having it recorded by a third party.

On file with the Trust, it serves as the formal transfer into the Trust and is presented should the Exchanger wish to dispute the fact the asset is properly recorded to the Trust. Where disputes may arise is when an Exchanger reaches old age and wants to give away what has already been given, or the Exchanger passes, and the Beneficiaries squabble over the assets that are not theirs.

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## Assignment of Assets

### S. M. Meyers Trust

I, Sandra Jay Allen, live at \_\_\_\_\_, and I hereby exchange Large Precision Machinery and supporting machinery and tools, for TCUs in S. M. Meyers Trust, created September 10, 2004 whose address is c/o Lawndale Direct, no, 84, 492 East Elm St., Canton, OH 50399. The Trustees of S. M. Meyers Trust are Darren Portinkin and Karen Rosencroft.

The current value of these assets is about \$2,125,000.00. The attached gives further details.

BE IT FURTHER KNOWN, for value received I, Sandra Jay Allen, hereby unconditionally and irrevocably assign and exchange to S. M. Meyers Trust all rights, title, and interest in and to the precision machinery as shown on the attached Exhibits A and B before referenced.

I, Sandra Jay Allen, fully warrant that I have full rights and authority to enter this assignment and the rights and benefits assigned below are free and clear of any lien, encumbrance, adverse claim or interest by any third-party, except as noted for the electrodischarge machine.

The assignment is binding on and inures to the benefit of S. M. Meyers Trust, and its successors and assigns.

In confirmation of agreements and commitments made September 10, 2004:

Dated \_\_\_\_\_

\_\_\_\_\_  
Sandra Jay Allen

*Notarization on reverse side*

(Notary not shown)

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**Art of Passing the Buck, Volume II**

## Appendix I

### **Inventory**

The Trust Grantor or the Exchangers decide what to put into Trust. Large, expensive items are easier to place in Trust than small assets. If it is a list of Jewelry, as shown in Sample Format 40, then hours of inventory become necessary. Most people keep their jewelry in boxes at home and not inventoried. If there is history associated with any of the pieces, it is not written down. When a person passes, it is not unusual for jewelry to be the subject of arguments and debates, as certain pieces become emotionally significant to heirs.

### **Pour-Over Will**

This list of Jewelry shown as Exhibit B for White Wind Trust is more appropriately attached to the Pour-Over Will to be divided among children when the mother passes than to keep it in Trust. To keep it in the Trust requires documentation, and counting. We present it here to demonstrate the level of detail required to keep small items in a Trust. The jewelry on this list, by the way, is also photographed, and correlated to the list. A job that took hours.

A hint, for those who may be ambitious enough to do this, is to place the jewelry on a color photocopy machine bed, place a white sheet over it, and press copy. With today's technology, this seems to be the easiest way to catalog small items. Mark the photograph with the number correlating to the item on the inventory list. Of course, using a camera works quite well, too.

### **Assets and Inventory**

The inventory list shown in Sample Format 41 is business equipment used in a Business Trust. Here, it is important to differentiate between an asset and inventory. For a Business Trust, the inventory is short lived, while the asset contributes to the production of cash flow, or is essential to keep the business functioning. Unless the furniture is expensive and expected to last years, it is considered inventory. A mahogany desk, though, is likely an asset.

As years pass, having this detailed inventory allows the Trustees to keep track of what the Trust owns, and proves to be helpful in the long run. Although it may be tedious at times to keep Large Precision Machinery Equipment lists up to date, it is necessary, especially when the assets have been purchased by the Trust, and not transferred into it from an Exchanger.



### **Sample Format 40 - Jewelry**

This list of jewelry came from a Trust where the Trustees log in assets. They have the Exchangers trained to fill out a New Asset Entry Form, shown as Sample Format 43. Receipts attached to it are given to the account manager, and then passed to the Trustees. Every two to three years, the list is reviewed. The values on this list have not been updated to reflect the current values of gold and silver.

In the White Wind Trust are other categories for assets. One of them is a collection of original long-playing albums, instead, some valued at over \$1,000.00 each.

If you have ever inherited jewelry, you may appreciate this list. It tells you what it is, its appearance and the value. In one of the associated Trusts, an inventory was made, and lost, prior to the Grantor's death. It will never be known if any of the jewelry had been taken by the various nurses who attended the Grantor before her death.

For those of you who look at this list and get overwhelmed, it has been reduced by several pages for the purpose of this example.



**White Wind Trust****Exhibit B - Jewelry****Inventory as September 10, 2004**

<b>I. D.</b>	<b>Function</b>	<b>Mfg/Artist/-Description</b>	<b>Qty.</b>	<b>\$ Each</b>	<b>Total</b>
1	Bracelet	/ — Braided Tri-gold	1	\$ 80.00	\$ 80.00
2	Bracelet	Figaro/ — 7-in. 14K 2-tone, 8.8 grams, gold	1	\$ 145.00	\$ 145.00
3	Bracelet	/ — Charm Bracelet with 6 charms, Clover Leaf, Christmas Tree, Diamond, Happy Birthday, Miami Beach, Dollar Bill, gold	1	\$ 600.00	\$ 600.00
4	Earrings	/ — Butterscotch Baltic Amber Stirling post	1	\$ 31.25	\$ 31.25
5	Earrings	/ — Post, purple, large, 1 round, one leaf-shaped, gold	1	\$ 300.00	\$ 300.00
6	Earrings	/ — Dangle, pierced, silver	1	\$ 18.00	\$ 18.00
7	Earrings	/Whales — 3-1/2-in. long, three strand silver, gold and amethyst, hooks	1	\$ 30.00	\$ 30.00
8	Earrings	/ — Inlaid amethyst, half moons, one shield	1	\$ 30.00	\$ 30.00
9	Earrings	/ — Pink Coral round post earrings	1	\$ 40.00	\$ 40.00
10	Earrings	/ — Gold post, dangle Pisces	1	\$ 40.00	\$ 40.00
11	Earrings	/ — Post with Gold Balls, 2 sizes, one smaller than the other	2	\$ 50.00	\$ 100.00
12	Earrings	/ — Gold and Red Coral loops	1	\$ 50.00	\$ 50.00



I. D.	Function	Mfg/Artist/-Description	Qty.	\$ Each	Total
13	Earrings	/ — Gold disks with rings	1	\$ 60.00	\$ 60.00
14	Earrings	/ — Sapphire and silver, ball with post	1	\$ 60.00	\$ 60.00
15	Earrings	/ — Gold and pearl, post dangle	1	\$ 70.00	\$ 70.00
16	Earrings	/ — Gold post, jade	1	\$ 75.00	\$ 75.00
17	Earrings	/ — Tri-gold, post, dangle, elongated diamond pattern	1	\$ 85.00	\$ 85.00
18	Earrings	/ — Tri-gold disks	1	\$ 100.00	\$ 100.00
19	Earrings	/ — Gold large loops, heavy	1	\$ 200.00	\$ 200.00
20	Hair Clips	/ — Silver, 3-in. with Indian Design	1	\$ 25.00	\$ 25.00
21	Necklace	/ — 18-inch Italian Link Necklace, Silver	1	\$ 35.00	\$ 35.00
22	Necklace	/ — 12-strand, 20-in., Silver	1	\$ 45.00	\$ 45.00
23	Necklace	/ — 16-in. gold with Taurus Pendant	1	\$ 50.00	\$ 50.00
24	Necklace	Many Facets/ — Butter-scotch Baltic Amber and Sterling Silver	1	\$ 92.00	\$ 92.00
25	Necklace	/ — Garnet and sea pearls	1	\$ 65.00	\$ 65.00
26	Necklace	/ — Cultured pearls, 18-in.	1	\$ 200.00	\$ 200.00
27	Necklace	/ — Tri-gold, 15-in.	1	\$ 100.00	\$ 100.00
28	Necklace	/American Indian — 24-in. "wire" link chain, oval pendant with gems of garnet, and turquoise	1	\$ 100.00	\$ 100.00
29	Necklace	/ — Malachite, 24-in.	1	\$ 130.00	\$ 130.00

## Appendix I

<b>I. D.</b>	<b>Function</b>	<b>Mfg/Artist/-Description</b>	<b>Qty.</b>	<b>\$ Each</b>	<b>Total</b>
30	Necklace	/ — Tri- colored coral, 24-in.	1	\$ 150.00	\$ 150.00
31	Necklace	/Cartouche — 14K Gold 21-in. with Cartouche oblong pendant	1	\$ 150.00	\$ 150.00
32	Necklace	Lutz White Bird/ — 25-in. 6-strand with two amethyst stones, and 2 feathers	1	\$ 180.00	\$ 180.00
33	Necklace	Figaro/ — 22-in., 14K 2-tone, 90.2-gram Chain, gold	1	\$ 2,520.49	\$ 2,520.49
34	Necklaces	/ — Pink Tourmaline and sea pearls, 30-in each.	2	\$ 100.00	\$ 200.00
35	Pendant	/ — Pink Coral, Chinese carved figure	1	\$ 80.00	\$ 80.00
36	Pin	/ — Oval Amethyst with Silver Setting	1	\$ 80.00	\$ 80.00
37	Ring	/ — Lady's dinner ring with 1 large rhodolite garnet and 20 diamonds	1	\$ 450.00	\$ 450.00
					\$ 6,766.74



### Sample Format 41 - Business Equipment

This list of business equipment came from a Trust making most of its money by starting businesses. The inventory needs to be reviewed every two to three years, and the Trustees sell or throw away that which is obsolete. You may wonder how such detail can be kept in a Trust. The answer is simple, if the members of the Trust Group are properly trained, the one acquiring the new items is responsible to fill out a New Asset/Inventory Entry form. All the pertinent data is dutifully listed, and receipts attached. The entry form goes to the account manager, who handles the accounting and passes the information to whomever is responsible for data entry. When items are

logged in one at a time, the list accumulates but the task is simple. Putting the information into a merge file allows it to be sorted in a variety of different ways, and put on various schedules.<sup>146</sup>

You might ask yourself who would take the time? When the family is a business, then the business of the family is to keep track of assets, and this is just another task in a long list of consistent updating. A Trust is no casual matter, and needs constant attention. We suggest a Living Trust keep schedules and exhibits such as these shown. If you have been in a situation where a person died and no one knows where the assets are, or where to find significant documents, then you can grasp the harsh reality that if you want the Trust to carry on, the records must be up-to-date and accurate. It is all in the administration, and we cannot stress this fact enough.



### Smithers Family Trust

#### Exhibit A - Business Equipment

*Inventory as of August 2, 2006*

<b>I. D.</b>	<b>Func- tion</b>	<b>Mfg/Artist/-De- scription</b>	<b>Model/- Reference</b>	<b>Qty.</b>	<b>\$ Each</b>	<b>Total</b>
1	AC Adaptor	/ — For use with APF Calculators. 17V 66Hz 3W. D.C. 7.5 V 100 mA	751S	1	\$ 5.00	\$ 5.00
2	AC Adapter	Maranta/Plug-in Power Supply for use with tape re- corders — Input: AC 120V, 60Hz. 6.5W, Output: DC 4.5V 700mA	DA-36	1	\$ 5.00	\$ 5.00

<sup>146</sup>

See Sample Format 43, New Asset Entry Form

## Appendix I

<b>I. D.</b>	<b>Func- tion</b>	<b>Mfg/Artist/-De- scription</b>	<b>Model/- Reference</b>	<b>Qty.</b>	<b>\$ Each</b>		<b>Total</b>
3	Adapter/ Chang- er	JVC/ — Digital Camera. AA/V80		1	\$	25.00	\$ 25.00
4	Air Pu- rifier	Alpine/ —	880	1	\$	250.00	\$ 250.00
5	Air Pu- rifier	Alpine/ —	Eagle 2500	1	\$	800.00	\$ 800.00
6	Ans- wering Ma- chine	Code-A-Phone/ — 7-3/4-in. X 5-in.	4250	1	\$	25.00	\$ 25.00
7	Battery pack	JVC/ — Lith- ium/ion	BE-V812- UL	2	\$	20.00	\$ 40.00
8	Battery Pack	JVC/ — Lith- ium/ion Recharge- able	BE-V814- UL	1	\$	25.00	\$ 25.00
9	Binoc- ulars	Adlerblick/ — 7 X 50. Wankel 7 de- gree with brown leather case	MC Cartonlux	1	\$	100.00	\$ 100.00
10	Calcu- lator	Panasonic/ — Check Printer	KX- RC1000, CPA 128KB Memory	1	\$	60.00	\$ 60.00
11	Calcu- lator	Texas Instru- ments/ — With paper	T15040-2	1	\$	60.00	\$ 60.00
12	Camera	JVC/ — Video Digital Camera, mini	JR- DVL9000	1	\$	1,400.00	\$ 1,400.00

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Appendix I

I. D.	Func- tion	Mfg/Artist/-De- scription	Model/- Reference	Qty.	\$ Each		Total	
13	Camera	Polaroid/ — Color	Instant One Step	1	\$	35.99	\$	35.99
14	Clock	Oregon Scien- tific/Time Ma- chine — Date and Time. 4-1/2-in. X 3-3/4-in.		1	\$	50.00	\$	50.00
15	Clock	Unknown/ — Rectangular with ram carving		1	\$	10.00	\$	10.00
16	Dupli- cator	Sony/ — High- speed. Monaural. Single copy	CCP-100	1	\$	500.00	\$	500.00
17	Fax	Panasonic/ — Plain Paper	KXFPC95	1	\$	200.00	\$	200.00
18	Foot Pedal with headset	Sanyo/ — Tran- scribing machine	FS-56	1		n/a	\$	0.00
19	Full Spectru m Desk Lamp	Ott/ —	TL131	1	\$	90.00	\$	90.00
20	Light	Mobilite/ — Desk	M340	1	\$	35.00	\$	35.00
21	Micro- phone	Realistic/ — Omnidirectional, flat	PZM	1	\$	10.00	\$	10.00
22	Micro- phone	Optimus/ — Omnidirectional	33-3022	1	\$	55.00	\$	55.00
23	Micro- phone	Optimus/Tie Clip — Omnidirectional	33-3013	1	\$	10.00	\$	10.00

# Appendix I

<b>I. D.</b>	<b>Func- tion</b>	<b>Mfg/Artist/-De- scription</b>	<b>Model/- Reference</b>	<b>Qty.</b>	<b>\$ Each</b>	<b>Total</b>
24	Micro- phone	/ — 3-1/2-in. with on/off switch		1	\$ 3.00	\$ 3.00
25	Micro- phone	SIMA/ — Shotgun Micro Telemike		1	\$ 50.00	\$ 50.00
26	Micro- phone	Realistic/ — Clip- On	Electret	1	\$ 25.00	\$ 25.00
27	Micro- phone	Shure/Super Omnidirectional — Dynamic Mi- crophone	33-1070D	1	\$ 30.00	\$ 30.00
28	Micro- phone	AIWA/ — Con- denser Zoom	CM-Z3	1	\$ 35.00	\$ 35.00
29	Pencil Sharp- ener	Hun Boston/ —		1	\$ 25.00	\$ 25.00
30	Photo- copier	Hewlett Packard/ — Color photo- copier	120	1	\$ 700.00	\$ 700.00
31	Power Supply	Doctron/ — Electro-Thermo Acupuncture		1	\$ 10.00	\$ 10.00
32	Printer	EPson/ — Color	Stylus 670	1	\$ 200.00	\$ 200.00
33	Printer	Hewlett Packard/Color Printer — DeskJet 820 Cse	C4568A	1	\$ 300.00	\$ 300.00
34	Recor- der	Sony/ — Minicassette. voice operated recording	M-750V	1	\$ 50.00	\$ 50.00

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Appendix I

<b>I. D.</b>	<b>Func- tion</b>	<b>Mfg/Artist/-De- scription</b>	<b>Model/- Reference</b>	<b>Qty.</b>	<b>\$</b>	<b>Each</b>	<b>\$</b>	<b>Total</b>
35	Recor- der	Radio Shack/ — Minicassette, voice actuation	MICRO-22	1	\$	30.00	\$	30.00
36	Recor- der, au- dio	Optimus/ — Au- dio Cassette, stan- dard	CTR17	1	\$	49.95	\$	49.95
37	Stereo, Radio, Recor- der	Panasonic/ — Por- table with graphic equalizer	RX-FS460	1	\$	80.00	\$	80.00
38	Tele- phone	GTE/ — 1 line	2-9420A	1	\$	25.00	\$	25.00
39	Tele- phone	Panasonic/ — Auto- matic Dialer, Speaker phone Sys- tem, 28 stations	Easa-Phone KX-T2315	1	\$	90.00	\$	90.00
40	Tele- phone	Panasonic/ — 2 line	KXT-3175	1	\$	25.00	\$	25.00
41	Tele- phone	General Electric/ — 2-line	2-9435C	1	\$	50.00	\$	50.00
42	Tele- scope	Swift/ — Zoom Spotting Scope	841	1	\$	300.00	\$	300.00
43	Televi- sion	Panasonic/ — Color Television	CT- 27G33W	1	\$	500.00	\$	500.00
44	Trans- criber	Sanyo/ — Memo- Scriber, audio cas- sette	TRC-8030	1	\$	125.00	\$	125.00
45	Trans- criber	Sony/ — Memo- Scriber, Minicassette	TRC-5200	1	\$	100.00	\$	100.00
							<b>Total</b>	<b>\$ 6,593.94</b>

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**Sample Format 42 - Office Furniture**

A different Trust donated this list to us. Here, the Trustees must decide what is inventory and what is an asset. Bookshelves are assets because they last over generations, while a chair may not last 15 years. Desks, like bookshelves, can last more than 100 years. The same applies to metal filing cabinets.

**Smithers Family Trust****Exhibit C - Office Furniture**

Inventory as of August 20, 2006

<b>I. D.</b>	<b>Function</b>	<b>Mfg/Artist/Description</b>	<b>Qty.</b>	<b>Each</b>	<b>Total</b>
1	Bookshelf	/ — 6-ft. tall X 13 Wide, medium brown, particle board	2	\$ 125.00	\$ 250.00
2	Bookshelf	Oak World/ — Oak 6-ft. high X 30-in. Wide	3	\$ 330.00	\$ 990.00
3	Chair	/ — Ocean Blue, high back, wheels	1	\$ 145.00	\$ 145.00
4	Chair	/ — Cream, 4 wheels, cushion	2	\$ 150.00	\$ 300.00
5	Desk	/ — Dark Oak, Left computer table, roll out printer stand	1	\$ 450.00	\$ 450.00
6	Desk Set	Oak World/ — Oak desk, computer desk, printer stand and corner connector	2	\$ 1,110.00	\$ 2,220.00
7	Filing Cabinet	/ — 18-in. Deep, 15-in. Wide, 2-drawer	2	\$ 65.00	\$ 130.00
8	Filing Cabinet	/ — 18-in. Deep by 14-in. Wide, 4 drawer	2	\$ 220.00	\$ 440.00
					\$4,925.00



**Sample Format 43 - New Asset Entry Form**

The Large Precision Machinery shown in Appendix I Sample Format 41, is shown below as it would appear using the New Asset Entry Form. Originally handwritten, the information is input into a data form appearing much like the form.

This form holds most of the data about the asset, but until it is put into columns it cannot be easily totaled. When put in columns, not all the information shown on the New Asset Entry Form is needed.



<b>Asset I.D./Trust</b>	I.D. A -, 2004	S. M. Meyer Trust
<b>Quantity, Price ea.</b>	1	\$850,000.00
<b>Title</b>	Electrodischarge Machine	
<b>Function</b>	Precision groove, holes, fancy cuts	
<b>Description</b>	3 to 5 tons, 5 ft. X 4 ft. X 10 ft. high	
<b>Mfg/Artist</b>	EDM Max	
<b>Model/Color</b>	F394334/Red	
<b>Location</b>	Machining floor	
<b>Purchased from</b>	Precision Machining Group	
<b>Purchase date</b>	February 8, 2002	
<b>Service Phone</b>	Precision Machining Group	
<b>Serial No.</b>	NFT099876-34	
<b>Warranty Date</b>	February 8, 2002	
<b>Warranty Length</b>	February 8, 2003	
<b>Sold Date</b>		
<b>Transferred Date</b>		
<b>Notes</b>	Used 40 hours per week.	
<b>Inventory as of</b>	September 10, 2004	

## Appendix J

### Legal

Justice and legality are two different issues. We have a basic idea in our mind that justice has morals and ethics and that what is fair and right wins in the end. Our legal setup does not incorporate justice in the same pure essence. What is right is a matter of interpretation, and using our procedural methods, presentation becomes key. The complexities of life with their many twists and turns create an unending panorama of every conceivable predicament.

### The Court Game

The innocent often serve prison time, while murders and thieves run amok.

Some astute researches have noticed the history of the word “court.” Taking its roots back in time, the judge can be viewed as a referee in a ball game similar to tennis, while the lawyers are the players. This is why the judge manages the discussion between the lawyers who try to “grand slam” each other, hoping their opponent will “miss the ball,” or not have a comeback to the argument. In the end, the judge decides, but only based on the information given to him or her. It is not the judge's job to do the research of the case. Thus, justice becomes subject to the one who is more clever, who has researched the law to make it apply more favorably in his or her case. Sadly, the favorable decision often goes to the side with more money and resources than the other.

The procedure is awkward. Thus, those who have not stood before a judge will find their first attempt unnerving. Further, not many lawyers go frequently to court, and training to stand before a judge is limited, even in law school.

### The Gray Area of Truth

The truth is often immaterial under the American system of jurisprudence. The lawyer does not need to know whether his or her client tells the truth, only whether the client's position can win the argument. Therefore, accepting a client depends on the strength of the argument. Is the other side likely to cave in, or is the law weighty in the lawyer's client's favor? None of this has anything to do with justice.

## **Art of Passing the Buck, Volume II**

We have spoken with lawyers who know a particular position is right, but they do not want to get involved, do not want to do the research, or they need far more money up front than is available. Comfort and a sure argument weigh heavily when deciding what clients to take and which ones to pass.

### **Money and Battles**

That brings us to the other part: money. The poor and the rich have access to the courts, but the members of the middle class do not unless they represent themselves (*pro se*). This is because legal fees run anywhere from \$150.00 an hour to over \$1,000.00 an hour for the higher-paid defense attorneys. Please note, they get paid whether the client wins or loses. Many lawyers get easy money, and are not interested in challenges, but only in ensuring the bucks in the bank. Why take a risk? Why stress over something when the same amount of money can be earned on easier cases? Do you blame them?

If the client takes responsibility for directing the case, it is much easier for a lawyer to act. Once you know what you have to do, have done the research and insist on performance and a particular argument, the lawyer can always turn to you and shrug his or her shoulders if you lose, "Well, that is what you wanted me to do."

### **The Prohibitive Cost of Being Right**

Lawsuits begin at \$50,000.00 to you or the Trust. If the money in the lawsuit will not gain more than \$50,000.00, then do not start. Most lawsuits run around \$100,000.00 to \$200,000.00 and up. This leaves the middle class to defend itself, which takes skill.

In Volume I we discussed contracts, and said the black race became enslaved because it had no right to contract and did not have access to the courts to sue. This is what has now happened to the middle class. You can make contracts, but to enforce them is costly.

Unless your Trust has a strong cash flow, your only defense may be your ability to stand before a judge. This task is not impossible, and although daunting, once determination sets in, an uninitiated Trustee can be unusually effective, using arguments a lawyer would not dare to say because of various obligations and connections within the courts.

The legal matters presented below are a smattering of subjects we feel every Trustee should know. Because the court cases are too long for this Appendix, we have taken out several paragraphs, marked by . . . from some of the cases, leaving random information so you may eventually become familiar with the subject matter.

### Finding the Case

For those unfamiliar with the retrieval of court cases from either the Internet or a law library there are several methods. One of them is to register at [www.FindLaw.com](http://www.FindLaw.com), the other is to open an account with the law library which can fax or mail cases to you, charging by the page.

### Presentation 1 - *Goldwater v. Oltman*

The following court case is a must-read for every student of Trusts. This is the first Common-Law Trust case in California where Trust Certificates are openly discussed. The question revolves around the responsibility of the Trust to third parties. Use this case as a reference to word your Trust Indenture concerning how third parties are handled.



HENRY GOLDWATER, Appellant, v. WILLIAM OLTMAN et al., Defendants;  
CHARLES M. CONANT et al., Respondents

L. A. No. 9754

Supreme Court of California 210 Cal. 408; 292 P. 624; 1930 Cal. LEXIS 399; 71 A.L.R. 871

October 1, 1930

#### HEADNOTES:

#### CALIFORNIA OFFICIAL REPORTS HEADNOTES

Trusts--Massachusetts or Business Trust--When Created. --The so-called Massachusetts or Business Trust is created wherever several persons transfer the legal title in property to Trustees, with complete power of management in such Trustees free from the control of the creators of the Trust, and the Trustees in their discretion pay over the profits of the enterprise to the creators of the Trust or their successors in interest.

Id.--Trustees--Election--Partnership. --Where the Trustees under a so-called Trust are subject to election by the shareholders, the latter exercise ultimate control of the organization, and the organization is a partnership and not a true Trust.

Id.--Business Trust--Control by Trustees--Personal Liability of Shareholders. --Under a true Trust, where the ultimate control of the business is retained by the Trustees and

## **Art of Passing the Buck, Volume II**

not by the shareholders, the latter are not personally liable on the obligations incurred by the Trustees or the managing agents appointed by the Trustees.

**Id.--Promissory Notes--Book Account--Account Stated--Character of Organization--Personal Liability of Shareholders.**

--In this action upon a promissory note executed by an organization through its president, and upon a book account and an account stated, the organization in question is held to be a Business Trust with the ultimate control of its affairs in Trustees, and, therefore, no direct personal liability attaches to the shareholders of said organization on said promissory note by virtue of the fact that they are such shareholders.

**Id.--Causes of Action--Pleading--Election.** --In such action, all the causes of action having been based upon the same transaction and involved the same amount of money, plaintiff had the right to set them forth in various and if need be even inconsistent counts; and it was error for the trial court to grant a motion, before plaintiff had rested his case, to compel him to elect upon which cause of action he desired to proceed.

**Pleading--Matter Within Knowledge of Defendant--Denials.** --Although a denial of allegations upon lack of information or belief is sufficient under some circumstances, it is not sufficient as to any matter presumably within the knowledge of the defendant, in which case his denial must be specific.

**Trusts--Promissory Notes--Delivery--Pleading--Denials.** --In such action, the complaint having alleged that certain defendants executed the promissory note in question and delivered the same as evidence of their obligation, a denial upon information and belief that the note was delivered "as evidence of any obligation at all of the said defendants or any of them," was an insufficient denial of such allegation for two reasons: first, it did not deny the fact of delivery, and second, whether or not the defendants delivered the note was a matter presumptively within their knowledge, and therefore they were called upon to deny the same positively if they wished to raise an issue on such point.

**Id.--Partnership--Compliance With Statutory Provisions--Denials--Pleading.** --In such action, an allegation that plaintiff's assignor, a partnership, had filed the Certificate required by sections 2466 and 2468 of the Civil Code, could not properly be denied on information and belief, as the filing of such Certificate was a matter of public record.

**Id.--Nonsuit--Pleading--Issues.** --In such action, the trial court erred in granting a nonsuit in favor of certain defendants, where their answer raised no issue as to certain material allegations of the complaint, and plaintiff was required to offer no proof

thereon; and it was likewise error to enter judgment in favor of other defendants who did not move for a nonsuit.

Id.--Liability of Trustees. --In the absence of an express or implied agreement with the creditor to the contrary, Trustees are personally liable on all contracts with third persons.

Id.--Liability of Trustees--Declaration of Trust--Construction. --In such action, a provision in the declaration of Trust which formed the basis of the organization which executed the promissory note in question, to the effect "all contracts . . . shall be the obligation of the Trustees, and in every written order, contract or obligation made by the Trustees, it shall be their duty to stipulate therein that neither the Trustees nor the cestui que Trust shall be held to any personal liability under or by reason of such order, contract or liability, and that all persons having dealings with the Trustees shall look only to the property of this Trust for payment," is interpreted to mean that the creators of the Trust have conferred on the Trustees the power of releasing themselves from personal liability, but in order to enjoy that privilege they must stipulate to that effect in every contract with a third person; and such privilege being a limitation on the rights of the creditors of the Trust, the limitation will not be enforced in the absence of a clear understanding and knowledge on the part of the creditors to the effect that no such liability is to exist.

(12) Id.--Trustees--Nonsuit--Evidence. --In such action, it was error to grant a nonsuit in favor of the Trustees of such organization, where the record shows that they did not stipulate that they would not be personally liable, and there is nothing in the record to show that plaintiff's assignor had knowledge of the clause relating to the personal liability of the Trustees at the time the promissory note was executed.

SYLLABUS: The facts are stated in the opinion of the court.

COUNSEL: John W. Rankin, Kimball Fletcher and Albee & Watkinson for Appellant.

Schweitzer & Hutton, Edward Winterer, Winterer, Combs & Ritchie and H. F. Clary for Respondent.

Barrett & McConnell, Amici Curiae, for Appellant. Manson & Allan, Amici Curiae, for Respondents.

David M. Burnett, John M. Burnett, Bohnett, Hill & Campbell and Edward M. Fellows, Amici Curiae.

## Art of Passing the Buck, Volume II

JUDGES: In Bank. OPINION BY: THE COURT

OPINION: [\*4 10] [\* \*625] In order to permit a re-examination of the record herein and to give further consideration to several important problems involved on this appeal, a hearing was granted by this court in this case after decision of the District Court of Appeal, in and for the Second Appellate District, Division Two [285 Pac. 734], affirming the judgment of the trial court. Although we are of the opinion that the District Court of Appeal correctly states the law in reference to the principal point involved on this appeal, due to the importance of the questions involved and due [\*\*\*2] to the fact that we differ from the District Court of Appeal in reference to several of the minor points involved, we deem it necessary to more completely state the law than was done by the District Court of Appeal. We adopt as part of this opinion the following statement of facts taken from the prevailing opinion of the District Court of Appeal:

“This appeal is taken from a judgment entered in favor of certain of the defendants following the granting of a [\*4 11] motion for nonsuit. An understandable presentation of the points presented for our consideration requires that we first review, as briefly as possible, the extremely voluminous pleadings in order that the issues between the plaintiff and various groups of defendants may be clarified.

“The second amended complaint, on which the plaintiff went to trial, sets forth ten causes of action. The first, omitting matters not germane to any point in controversy and dispensing with the legal verbiage, may be summarized as follows, the Roman numerals referring to the paragraphs as numbered in the pleading:

“Defendants Oltman and Morante are partners under the name of 'Morante Comedy Company':

“All defendants other [\*\*\*3] than Morante and Morante Comedy Company are partners under the name 'Drascena Productions':

“Between October 15 and December 1, 1920, Bloom Film Laboratories, a copartnership (hereinafter for brevity referred to as 'Laboratories'), 'performed and furnished work, labor and materials, and expended money, all at the special instance and request of defendants' Morante, Oltman and Morante Comedy Company:

“\$ 3,822.94 was the reasonable value of this work, etc., of which \$ 3,000 is unpaid;

“February 9, 1921, an agreement was made between defendants Oltman and Morante and Morante Comedy Company as vendors and all the other defendants as vendees, whereby the business and property of the vendors was transferred to the vendees, who,



## APPENDIX J

as part of the consideration, 'promised, assumed and agreed to pay' to the Laboratories the debt from the vendor. This agreement, the plaintiff, on information and belief, alleges was in writing;

"January 3, 1921, one of the three partners composing the laboratories assigned his interests to the other two, who continued in business under the firm name, and on June 7, [\*412] 1922, assigned and transferred the claim in suit to the [\*\*\*4] plaintiff:

"February 9, 1921, 'as evidence of said obligation of the defendants, excepting only . . . reasonable attorney fee:"X.

"No part of the \$ 3,000 'or any amount of principal, interest or attorney's fees, of said note' has been paid;

"XII.

"None of the defendants has filed Certificates of copartnership in the clerk's office.

"The second, third and fourth causes of action are identical with the first, with these exceptions: the second omits paragraph six, alleging reasonable value, and in lieu thereof alleges a promise to pay the Laboratories a part payment, leaving a \$ 3,000 balance unpaid: the third omits paragraphs five and six and substitutes an allegation of account stated between Morante Comedy company and the Laboratories; and the fourth, with the same omissions as the [\*\*\*5] third, alleges the original indebtedness to have been on a book account.

" [\*\*626] The remaining causes of action all plead that the defendants other than Morante and Morante Comedy Company are members of and unit holders in an association known as 'Drascena Productions,' all the business of which is transacted and all the property of which is held in Trust by five of the defendants as Trustees under a declaration of Trust of record in Los Angeles county, the provisions of which are, at least in part, set forth. It is further alleged that each of seventy-two named defendants owns the number of units or 'shares of Trust Certificates' set opposite his name in the complaint. Except for the omission of the allegation as to partnership of those defendants connected with Drascena Productions found in paragraph four of the first cause of action, and by reference thereto incorporated [\*413] in causes two, three and four, and the substitution therefor of the allegation as to nature and membership of Drascena Productions above referred to, causes five to eight, both inclusive, contain the same allegations as do causes one to four, respectively; that is to say, five corresponds to [\*\*\*6] one, counting on the reasonable value of the work done, etc., as the basis of the



## Art of Passing the Buck, Volume II

original indebtedness; six corresponds to two, counting on the promise of Morante Comedy Company to pay, and so on.

...

"Drascena Productions as a separate entity was not made a party to the action, the title of the same as it appears from the complaint listing all defendants other than Oltman and Morante as copartners doing business under the firm name and style of "Drascena Productions." The transcript fails to show service on [\*\*\*7] or appearance by some of the defendants, including reasonable attorney fee;"

X.

"No part of the \$ 3,000 'or any amount of principal, interest or attorney's fees, of said note' has been paid:

"XII.

"None of the defendants has filed Certificates of copartnership in the clerk's office.

"The second, third and fourth causes of action are identical with the first, with these exceptions: the second omits paragraph six, alleging reasonable value, and in lieu thereof alleges a promise to pay the Laboratories a part payment, leaving a \$ 3,000 balance unpaid; the third omits paragraphs five and six and substitutes an allegation of account stated between Morante Comedy company and the Laboratories; and the fourth, with the same omissions as the [\*\*\*5] third, alleges the original indebtedness to have been on a book account.

" [\*\*626] The remaining causes of action all plead that the defendants other than Morante and Morante Comedy Company are members of and unit holders in an association known as 'Drascena Productions,' all the business of which is transacted and all the property of which is held in Trust by five of the defendants as Trustees under a declaration of Trust of record in Los Angeles county, the provisions of which are, at least in part, set forth. It is further alleged that each of seventy-two named defendants owns the number of units or 'shares of Trust Certificates' set opposite his name in the complaint. Except for the omission of the allegation as to partnership of those defendants connected with Drascena Productions found in paragraph four of the first cause of action, and by reference thereto incorporated [\*413] in causes two, three and four, and the substitution therefor of the allegation as to nature and membership of Drascena Productions above referred to, causes five to eight, both inclusive, contain the same allegations as do causes one to four, respectively; that is to say, five corresponds to

[\*\*\*6] one, counting on the reasonable value of the work done, etc., as the basis of the original indebtedness; six corresponds to two, counting on the promise of Morante Comedy Company to pay, and so on.

“Drascena Productions as a separate entity was not made a party to the action, the title of the same as it appears from the complaint listing all defendants other than Oltman and Morante as copartners doing business under the firm name and style of “Drascena Productions.” The transcript fails to show service on [\*\*\*7] or appearance by some of the defendants, including Oltman, Morante and the Morante Comedy Company; others who were served defaulted, and their defaults were duly entered. Therefore, in further reference to ‘the defendants,’ we are to be understood as meaning only those who answered. These may be divided into four groups. Group one was composed of thirteen defendants on behalf of whom an answer was filed by attorneys Schweitzer & Hutton and included the defendant Lars A. Dahl, specially mentioned for reasons which will appear later. The answer of this group failed to deny or in any way refer to the tenth cause of action set up in the complaint. Group two also consisted of thirteen defendants, represented by attorney Winterer, and to these thirteen may be added defendants Apostol and Arnis, who had filed a separate answer by other counsel, but who were represented [\*414] at the trial by Mr. Winterer. Group three was composed of defendants I. N. and Nellie M. Thompson, on whose behalf an answer was filed by attorney C. O. Morgan.

In another leading case decided shortly after *Williams v. Inhabitants of Milton*, supra, the same court said concerning the controlling features between a Trust and a partnership: **“A declaration of trust or other instrument providing for the holding of property by Trustees for the benefit of the owners of assignable Certificates representing the Beneficial interest in the property may create a Trust or it may create a partnership. Whether it is the one or the other depends upon the way in which the Trustees are to conduct the affairs committed to their charge. If they act as principals and are free from the control of the Certificate holders, a Trust is created; but if they are subject to the control of the Certificate holders, it is a**

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partnership.” ( *Frost v. Thompson*, 219 Mass. 360 [106 N. E. 1009, 1010]; see, also, *Horgan v. Morgan*, 233 Mass. 381 [124 N. E. 32] . . .<sup>147</sup>

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<sup>147</sup>

We have added bolding to emphasis the importance of this fundamental point.

## Presentation 2 - Trustees Representing the Trust

There have been questions about whether a Trustee can represent a Trust in court without legal counsel. The issue of the E. Pope Equity Trust was brought to our attention. One of the Trustees has written an analysis of the court decision.



### C. E. Pope Equity Trust v. United States

818 F.2d 696 (9<sup>th</sup> Cir. 1987)

#### Commentary on C.E. Pope

Parties may appear in federal courts on their own behalf as allowed by court rules. The Federal Rules of Civil Procedure (FRCvP) state that a Trustee of an Express Trust<sup>148</sup> may bring a suit in his or her own name.<sup>149</sup>

In (*C.E. Pope*) the court said that FRCvP 17(a) did not apply to the Trustee in that case.<sup>150</sup> The question now is, because of *C.E. Pope*, are Trustees of Express Trusts restricted from bringing cases into federal court for their Trusts? For reasons described as follows, this writer believes not.

Richard L. Stradley (Stradley) was the Trustee involved in *C.E. Pope*. He was not a Trustee of the complainant, but rather a Trustee of another Trust which was itself a

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<sup>148</sup> *Express Trust*. A Trust created or declared in express terms, and usually in writing, as distinguished from one inferred by the law from the conduct or dealings of the parties. ...*Black's Law Dictionary, 5th Ed.*

<sup>149</sup> Federal Regulations Code of Civil Procedure (FRCvP) 17(a) Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest. [A] ... Trustee of an Express Trust ... may sue in that person's own name without joining the party for whose benefit the action is brought.

<sup>150</sup> ... Rule 17(a) authorizes a Trustee of an Express Trust to sue on behalf of the Trust, without joining persons, for whose benefit the action is brought; the rule does not warrant the conclusion that a nonlawyer can maintain such a suit *in propria persona*. The reciprocal relation between the bar and the bench permits an exception only for a person acting personally. ... *C.E. Pope*

## Art of Passing the Buck, Volume II

Trustee of the complainant.<sup>151</sup> Being not a Trustee of the complainant, he lacked status to act in the complainant Trust's persona. In the case, not brought in his name, he could not be viewed as a party conducting his own case, and could not claim status to speak *pro se*.

Stradley's Trustee status did not come from a direct contract through the Indenture of *C.E. Pope Equity Trust*, the complainant. About the complainant, Stradley's Trustee status came through an implied relationship with the other Trust.

The *C.E. Pope* case is about a Trustee's bringing suit who is not a Trustee of the Express Trust he represented and thus lacks personal connection to *C.E. Pope*. Therefore, Stradley had no private or direct contractual power to act in the persona of that Trust, and cannot rely on FRCvP 17(a) to act in his own persona for that Trust.

Does this mean that express Trusts cannot use their nonlawyer Trustees to appear in a federal court? This writer does not believe so. It appears that nonlawyer Trustees of express Trusts may bring cases into the federal courts for their Trusts as they always have. Why is this? Because a Trustee of an express Trust has a direct contractual relationship with that Trust. Said contract cannot be made void, and it allows said Trustee to appear before the federal courts *in persona conjuncta*.<sup>152</sup> *C.E. Pope* only constrains a nonlawyer Trustee from appearing for a Trust *in propria persona*, and says nothing about a nonlawyer Trustee appear for a Trust *in persona conjuncta*.

However, when there are two Trustees, a Trust is considered a "collective entity," and an "entity" needs to be represented by an attorney. The exception to this is when the "entity" is financially destitute.<sup>153</sup>

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<sup>151</sup> Stradley is two steps removed from the real parties in interest. *C.E. Pope*.

<sup>152</sup> *Persona conjuncta*: A personal connection [literally, a united person, union with a person] *Black's Law Dictionary, 5th Ed.*

<sup>153</sup> *U.S. Polycon Corp. v United States of America*, 43 Fed. Cl. 11; 1999 U.S. Claims LEXIS 13; 43 Cont. Cas. Fed. (CCH) P77,424, January 27, 1999 Decided.

### **Presentation 3 - Privacy and Corporate Records**

Although these two cases revolve around corporate records, they show you how what the state creates the state controls. Oddly though, the second case reveals that the records can be summoned, but the person responsible for them does not have to speak. We think this is obvious why these two cases were chosen for this Appendix.



U.S. Supreme Court

BRASWELL v. UNITED STATES, 487 U.S. 99 (1988)

487 U.S. 99

BRASWELL v. UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE  
FIFTH CIRCUIT

No. 87-3.

Argued March 1, 1988

Decided June 22, 1988

A federal grand jury issued a subpoena to petitioner as the president of two corporations, requiring him to produce the corporations' records. The subpoena provided that petitioner could deliver the records to the agent serving the subpoena, and did not require petitioner to testify. The corporations involved were incorporated by petitioner, who is the sole shareholder of one of them. Petitioner, his wife, and his mother are the directors of both corporations, and his wife and mother are secretary-treasurer and vice president of the corporations, respectively, but neither has any authority over the corporations' business affairs. The District Court denied petitioner's motion to quash the subpoena, holding that the "collective entity doctrine" prevented petitioner from asserting that his act of producing the corporations' records was protected by the Fifth Amendment privilege against self-incrimination. The Court of Appeals affirmed.

Held:

The custodian of corporate records may not resist a subpoena for such records on the ground that the act of production will incriminate him in violation of the Fifth Amendment. This Court's precedents as to the development of the collective entity doctrine do

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not support petitioner's argument that, even though the contents of subpoenaed business records are not privileged, and even though corporations are not protected by the Fifth Amendment, nevertheless his act of producing the documents has independent testimonial significance, which would incriminate him individually, and that the Fifth Amendment prohibits Government compulsion of that act. If petitioner had conducted his business as a sole proprietorship, *United States v. Doe*, 465 U.S. 605, would require that he be provided the opportunity to show that his act of production would entail testimonial self-incrimination as to admissions that the records existed, were in his possession, and were authentic. However, representatives of a collective entity act as agents, and the official records of the organization that are held by them in a representative rather than a personal capacity cannot be the subject of their personal privilege against self-incrimination, even though production of the papers might tend to incriminate them personally. The plain mandate of the precedents is that the corporate entity doctrine applies regardless of the corporation's size, and regardless of whether the subpoena is addressed [487 U.S. 99, 100] to the corporation or, as here, to the individual in his capacity as the records' custodian. Any claim of Fifth Amendment privilege asserted by the agent would be tantamount to a claim of privilege by the corporation, which possesses no such privilege. Recognizing a Fifth Amendment privilege on behalf of records custodians of collective entities would have a detrimental impact on the Government's efforts to prosecute "white-collar crime." Such impact cannot be satisfactorily minimized by either granting the custodian statutory immunity as to the act of production or addressing the subpoena to the corporation and allowing it to choose an agent to produce the records who can do so without incriminating himself. However, since the custodian acts as the corporation's representative, the act of production is deemed one of the corporation, not the individual, and the Government may make no evidentiary use of the "individual act" of production against the individual.

CURCIO v. UNITED STATES, 354 U.S. 118 (1957)

354 U.S. 118

CURCIO v. UNITED STATES.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE  
SECOND CIRCUIT.

No. 260.

Argued March 28, 1957.

Decided June 10, 1957.

In the circumstances of this case, the custodian of a union's books and records, who had failed to produce them before a federal grand jury pursuant to subpoena, could, on the ground of his privilege against self-incrimination under the Fifth Amendment, lawfully refuse to answer questions asked by the grand jury as to the whereabouts of such books and records; and his conviction of criminal contempt for refusing to answer such questions is reversed. Pp. 118-128.

- A.     Though the custodian of the books and records of a corporation or a labor union may not, on grounds of possible self-incrimination, refuse to produce them pursuant to subpoena, he cannot lawfully be compelled, in the absence of a grant of adequate immunity from prosecution, to condemn himself by his own oral testimony. Pp. 122-128.
- B.     In the circumstances of this case, the questions which petitioner refused to answer were incriminating. P. 121, n. 2.

234 F.2d 470, reversed and remanded.

◆ ◆ ◆



## **Art of Passing the Buck, Volume II**

### **Presentation 4 - Hawaii Administration Act: Hawaiian Trust**

There has been many battles over the Hawaiian Queen's Trust. Left to the Hawaiian People, it has been pillaged by the government. This is but one of the many lawsuits revolving around it.

VIRGIL E. DAY, et al v. HAUNANI APOLIONA et al,

No. 06-16625

D.C. No.

CV-05-00649-SOM

#### **OPINION:**

BERZON, Circuit Judge:

Hawaii Admission Act, Pub. L. No. 86-3, 73 Stat. 4 (1959) ( Admission Act) granted Hawaii title to most of the federal government's public land within the state, *id.* at 5(b)-(e), 73 Stat. at 5-6, and required the state to hold that land and profits from it in public Trust for five purposes, *id.* at 5(f), 73 Stat. at 6. One such purpose is for the betterment of the conditions of Native Hawaiians. *Id.* The other purposes: for public schools, development of farm and home ownership, public improvements, and the provision of land for public use are not limited to Native Hawaiians. *Id.*

The plaintiffs in this case, whom we call Day after the first-named of them, are Native Hawaiians, defined under federal law as descendants of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778. Hawaiian Homes Commission Act, Pub. L. No. 67-34, 42 Stat. 108 (1921) ( HHCA ); see generally *Rice v. Cayetano*, 528 U.S. 495, 507 (2000).<sup>1</sup>Based on the Admission Act and state law, these Native Hawaiians contend that the defendants, current and former Trustees of the state's Office of Hawaiian Affairs ( OHA ), have not properly considered ethnic distinctions in spending the assets of the Admission Act Trust ( 5(f) Trust ). To enforce their asserted right to ensure that the 5(f) Trust funds are spent in accordance with the Admission Act's specifications, Day filed suit under 42 U.S.C. 1983.

A considerable line of precedent in this circuit holds that Native Hawaiians, as Beneficiaries of the 5(f) Trust, have a right under the Admission Act that is enforceable by 1983. The district court, however, held to the contrary, taking the view that recent Supreme Court cases have so undermined our prior case law that suits like this one may

no longer be maintained. After a careful comparison of our prior cases with the recent Supreme Court 1983 cases on which the district court relied, we cannot agree that there is a conflict sufficient to justify a district court or a three-judge panel of this court disregarding well-established precedent. We therefore reverse the district court's dismissal of the case and, without expressing any opinion of the merits of Day's allegations, remand for further proceedings.<sup>2</sup>

...

Our next substantive discussion of the issue was in *Akaka I*, 928 F.2d at 826-27. *Akaka I* considered Native Hawaiians' claim that OHA Trustees violated 5(f) by commingling 5(f) Trust funds with other funds, and by not spending the Trust funds to benefit Native Hawaiians or to serve the other 5(f) purposes. *Id.* at 826. We did not directly address the question of whether the statute created an enforceable right. But we did discuss the plaintiffs' rights, in explaining why they had standing even though the Trustees could legally spend the 5(f) funds for purposes other than to benefit Native Hawaiians:

...

***B. The effect of recent Supreme Court cases***

After *Akaka I* was decided, two Supreme Court cases *Blessing v. Freestone*, 520 U.S. 329 (1997), and *Gonzaga*, 536 U.S. 273 summarized, explained, and, on some points, refined the law regarding when a statute creates a right enforceable under 1983. The two cases are now the natural starting point for analysis of the issue. See generally *Ball v. Rodgers*, No. 04-16963, \_\_\_ F.3d \_\_\_, 2007 WL 2034043, at \*6-7 (9th Cir. July 17, 2007). Nevertheless, neither undercut[s] the theory or reasoning underlying [*Akaka I*] in such a way that the cases are clearly irreconcilable. 11 Miller, 335

***C. The district court's analysis***

Our analysis of this issue differs not only in result but also in approach from that of the district court. The district court held that after *Gonzaga*, *Akaka I*'s reaffirms that 5(f) established a right enforceable under 1983 was no longer good law, because that conclusion is irreconcilable with the Ninth Circuit's earlier holding in *Keaukaha I* that there was no implied private right of action under the Admission Act. This conclusion was based on a misunderstanding of *Gonzaga*.

The court read *Gonzaga* to equate the availability of an implied private right of action with the availability of a right enforceable under 1983. But *Gonzaga* endorsed no such equation. To the contrary, *Gonzaga* stressed that whether a statutory violation may be

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enforced through 1983 is a different inquiry than that involved in determining whether a private right of action can be implied from a particular statute.



### Presentation 5 - Marriage License and the State

When you get a license to marry, the state becomes a third party to the action.<sup>154</sup> In this court-case reference, the state also claims to be a guardian of the marriage couple's morals.

Further, a marriage license was originally created for interracial marriages when those of the white race wished to marry those of the black race. In our history this is due to the status on citizenship. In Black's Law Fourth Edition, we find this definition:

MARRIAGE LICENSE. A license or permission granted by public authority to persons who intend to intermarry, usually addressed to the minister or magistrate who is to perform the ceremony, or, in general terms, to any one authorized to solemnize marriages. By statute in some jurisdictions, it is made an essential prerequisite to the lawful solemnization of the marriage.

*Black's Law* goes on to state that intermarriage, "In the popular sense, . . . denotes the contracting of a marriage relation between two persons considered as members of different nations, tribes, families, etc. . . ."

Although the person who originally wrote this has remained unknown, we feel it is important, especially when a marriage involves a Trust. As mentioned in Chapter 16, marriage is a business venture. Herein lies the ultimate truth of that statement.

### State Involvement

Would you rather have that business venture with or without the state involved? Using a Trust to hold assets for the children provides a secure resource for them.

This should be an eye-opener, and another testimony to the twisted reality under which we live.

The following document has been edited.

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<sup>154</sup> *Roberts v. Roberts* 81 CA2d 871, 185 P2d 381 (1947)



## **Enlightening Conversation with a Marriage License Bureau**

Author Unknown

About 15 years ago, my former wife of about 26 years filed for divorce. We had seven children, five daughters and two sons. At the time I prepared a counterclaim to the Petition for Dissolution, her attorney filed in Domestic Relations (DR) court.

### **Marriage License Implications**

I met one afternoon with the head of the Maricopa County Superior Court, Marriage License Bureau, in downtown Phoenix. A young woman, about 25 years old, headed the marriage license bureau. I asked her to explain to me the general and statutory implications of the marriage license. She was cooperative, and called in an assistant, a tall black man who, at the time, wrote a manual for internal departmental use.

### **Common-Law States**

She deferred to him for most technical explanations. He walked me through the details of the marriage license as it works in Arizona. He mentioned marriage licensing is much the same in the other states—but there are differences. Arizona is one of eight western Community Property states. The other states are Common Law states, including Utah, except for Louisiana which is a Napoleonic Code state.

### **Secular and God**

He then explained some of the details of the marriage license. He said, first, the “marriage license” is a “secular<sup>155</sup> contract between the parties and the state.” The state is the “principal party” in this secular contract. The husband and wife are “secondary or “inferior parties.”

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<sup>155</sup> Of the world, as opposed to of the church.

## Art of Passing the Buck, Volume II

The secular contract is a three-way contract between the "state," as "principal," and the husband and wife as the other two parties to the Contract.

He said, in the traditional sense a marriage is a covenant between the husband and wife, and God. But in the secular contract with the state, "reference to God" "is a dotted line," and "NOT" "officially considered in the secular contract.

He said, if the husband and wife wish to include God as a party in their marriage, that is a "dotted line" they added "in their own minds." He repeated, the state's marriage license is "strictly secular." He said further, God being a "dotted line" means the state regards any mention of God as "irrelevant," even "meaningless."

He said in the traditional religious context, marriage is a covenant between the husband and wife and God with husband and wife joined as one. This "is not" the case in the secular realm of the state's marriage license contract. The state is the "principal" or "dominant" party. The husband and wife are merely contractually "joined" as business partners, "not" "in any religious union. They may even be considered, he said, connected to each other by another "dotted line."

He drew a picture of a triangle with the state at the top and a solid line extending from the apex, down the left side to the husband, and a separate solid line extending down the right side to the wife. A dotted line between them merely showed they consider themselves to have entered a religious union of some sort that is irrelevant to the state.

### Marriage License Secular Contract Diagram

STATE (primary party)

HUSBAND and WIFE (secondary party)

GOD (secondary party)

The state recognizes these religious overtones of the marriage as a state official or a minister of a religion must solemnize it. Deputized to perform the marriage ceremony, the clergy, or state representative, returns the signed and completed marriage license to the state.

### **Marriage is a Business Enterprise**

The assistant reiterated marriage is “strictly” secular to the state. It is a privileged business enterprise, so various tax advantages and other political privileges attach to the marriage license contract that have “nothing at all” to do with marriage as a religious covenant or bond between God and a man and a woman.

### **Principles of Community Property**

To get more clarity on this subject, read a legal treatise on marriage, *Principles of Community Property*, by William Defuniak. Community Property law descends from Roman Civil Law through the Spanish Codes, 600 A.D., written by the Spanish juris-consults.<sup>156</sup> In the civil law, the marriage is a for-profit venture or profit-making venture. This is true even though it may never produce a profit. When the wife goes to the local market to buy foodstuffs and other supplies for the marriage household, she restores the stocks of the business. To restate: In the civil law, the marriage is a business venture. Also, as children come into the marriage household, the business venture has “born fruit.”

### **Privileges**

Now, back to the explanation by the Maricopa County Superior Court, Marriage Bureau's administrative assistant. He explained every contract must have “consideration.” The state offers consideration in the form of the license itself—the piece of paper, the “Certificate of Marriage.” The other part of consideration by the state is “the privilege to be regulated by statute.”

He added this privilege to be regulated by statute encompasses all related statutes, and all settled court cases. This includes all statutes and regulations in the years following beginning the marriage. He said, in a way the marriage license contract is a flexible, ever-changing

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<sup>156</sup> This rose when the Moors occupied Spain. The juris-consults were not judges, but were men skilled in the Sharia, or Islamic law, empowered to settle disputes provided both parties agreed to be bound by the decision. This is similar to mediation.

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contract as time goes along—even though the husband and wife do not realize that.”

Can it be a true contract if the state fails to make full disclosure of the terms and conditions? A true contract is entered knowingly, intelligently, intentionally, and with informed consent. Otherwise, technically there is no contract.

### Contract Inequities

Another way to look at the marriage license contract with the state is a “contract of adhesion.” This is a contract between two disparate, unequal parties. Again, a flawed “contract.” This is also known as a “specific performance” contract because of the privileges, duties and responsibilities that attach.

Consideration of the husband and wife is the fee paid. This is the “implied” agreement to be subject to the state’s statutes, rules, and controls. This includes all court cases relating to marriage law, family law, children, and property. He stressed this contractual consideration by the bride and groom places them in a definite and defined-by-law position “inferior” and subject to the state. Few people realize this.

### Children Belong to the State

He also said children born to the marriage are by law “the contract bearing fruit.” This means the children “primarily” belong to the state. It is important for parents to understand two doctrines fixed in the United States during the 1930s. The first is the Doctrine of *Parens Patriae*. The second is the Doctrine of *In Loco Parentis*.

*Parens Patriae* means “the parent of the country” or to be blunt—the state is the undisclosed true parent. Along this line, a 1930s Arizona Supreme Court case states parents have no property rights in their children, and have charge of their children during only good behavior at the sufferance of the state.<sup>157</sup> This means that parents may raise their children and keep custody of their children as long as they do not offend the state. If they displease the state, the state can step in and

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<sup>157</sup> No court case reference is given in the original article.

exercise its superior status and take custody and control of its children. The parents are only conditional caretakers, thus the Doctrine of *In Loco Parentis*.

### **Ownership**

He also added a few more technical details. "The marriage license is a continuing contract with the state. Technically, the marriage license is a business license allowing the husband and wife, in the name of the marriage, to enter contracts with third parties and contract mortgages and debts." They get car loans, home mortgages, and installment debts in the name of the marriage because it is not only a secular enterprise, but a privileged business enterprise as well as a for-profit business enterprise. The marriage contract gets property throughout its existence and over time. The hope is the property increases in value.

### **Children**

Also, the marriage contract "bears fruit" by adding children. If sometime later, the marriage fails, and a "divorce" results, the contract continues.

The "divorce" is merely a contractual dissolution or amendment of the terms and conditions of the contract. Jurisdiction of the state over the marriage, over the husband and wife, now separated, continues and continues over all areas of the marriage, over marital property and children brought into the marriage. That is why family law and the Domestic Relations court calls "divorce" a dissolution of the marriage because the contract continues in operation but in amended or adapted form. He also pointed out the marriage license contract is "one of the strongest, most binding contractual relationships" the state has on people.

### **The Heat of the Moment**

At the end of our hour-long meeting, I humorously asked if other people asked the questions I did? The assistant replied that in the several years he worked there, he was not aware of anyone else asking these questions. He added he was glad to see someone interested in the legal implications of the marriage license and the contractual relation-



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ship it creates with the state. His boss, the young Marriage Bureau department head, stated, "You have to understand that people who come in here to get a marriage license are in heat. Their last interest is technical, legal, and statutory implications of the marriage license."

### **Civil War**

I hope this is helpful information to anyone interested in getting more familiar with the contractual implications of the marriage license. The marriage license, as we know it, did not come into existence until after the Civil War and did not become standard practice in all the states until after 1900, becoming firmly set up by 1920. In effect, the states or governments seized or took over control of marriages in secular form and in the process declared Common Law applicable to marriages "abrogated."

## Presentation 6 - Trustee's Unsuccessful Defense<sup>158</sup>

This court case splits hairs of when a Trustee must pay his own legal fees and when the Trust pays them. Before proceeding with legal matters for the Trust, every Trustee should review the *Estate of McAdams* and related cases to be sure the legal fees are paid by the Trust. Further, check the Trust Indenture for clarification.

### Compensation for Legal Fees

This case of *Estate of McAdams*, 104 Cal.App.4th 1221 (2003), defines when a Trustee can be compensated for legal expenses. The court case draws a fine line between a Trustee acting for himself, and when he acts for the Trust.

### Trust Amendment

The court case revolved around an amendment to the Trust. Eventually it was decided that the amendment failed because of undue influence. The Trustee engaged in the contest of the amendment.

*McAdams* discusses:

... a Trustee, defending his account from charges of mismanagement would not warrant the hiring of counsel by the Trust because such litigation would be solely for the benefit of the Trustee.

The court referred to *Estate of Higgins*<sup>159</sup> wherein it is stated:

... the parties benefitting from the litigation should pay for attorney fees and not the estate as a whole.

The writers comment:

It is difficult to determine if *McAdams* stands for the proposition that the Trustee should take a neutral position on the question of determining the validity of a Trust amendment that merely determines the

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<sup>158</sup> Marshal A. Oldman and Susan J. Cooley, *Counsel for Trustee is Denied Fees for Unsuccessful Defense*, Focus Section, Los Angeles Daily Journey, March 19, 2007

<sup>159</sup> *Estate of Higgins*, 158 Ca. 355 (1910)

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identity of the Beneficiaries or whether the outcome of the litigation determines the question of attorney fees.

In *McAdams*, the Trustee expected the Trust to pay the attorney, but because of the complexities of the *McAdams* situation, the court ruled the Trustee had to pay his own attorney expenses.

### **Presentation 7 - United States, a Corporation**

The "District of Columbia Organic Act of 1871" created a federal corporation, which is sited in the city of Washington and is known as "District of Columbia." When you refer to Washington, D.C. you refer to a corporation. Also, see Tax Restructuring Act of 1998. Washington, D.C. is not part of the states united.

#### **United States Trademarks**

That Organic Act of 1871 was done lawfully under the Constitution by the Congress of the United States of America,<sup>160</sup> that is, the Congress of the Republic. Article 1 Section 8 of the Constitution gives them the authority to do this. Approximately 6 months later, that Act was amended to add the following trademarks to that corporation: U.S., USA, UNITED STATES, AMERICA and federal government.

Since that time, the use of federal corporations, under those trademarked business names and others, was added later to handle government functions.

For further information about United States of America, see Glossary.

#### **United States Code Definitions**

United States Code, Title 18 section 3002 (Definitions) and you will find the following:

USC, Title 18 § 3002. Definitions

Release date: 2003-05-15

As used in this chapter:

(15) "United States" means—

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<sup>160</sup>

The Constitution **for** the United States of America, while the United States **of** America is a corporation.

- (A) a Federal corporation;
- (B) an agency, department, commission, board, or other entity of the United States; or
- (C) an instrumentality of the United States.

### **Royalty Ownership—Still Not Free of the Crown**

It must be mysterious that people would go to such length to obscure and confuse the name of a nation. This is a backward way of letting us know how powerful the United State Constitution is, and how much it thwarts their effort to control the People. The Bill of Rights stops overall takeover and domination of the United State of America, by other “powers,” as originally intended.

The “royals” of Europe could never conceive of a free People; their intention was always to own America, and it would be only another one of their possessions. They believe that to this today.

### **Funding of Ships to America**

In the 1500s, the royalty of Europe funded the ships coming to America. For taking this extraordinary risk at the time, the land discovered belonged to them.

### **Revolutionary War and Assets**

Whatever the people claimed on landing here belonged to the financiers. The Revolutionary War, an unprecedented rebellion at the time, threatened this hold of the royals.

Through the Treaty of Peace in Paris in 1783, Article 5, all the royals, especially the British, got their land and all possessions returned to them:

It is agreed that Congress shall earnestly recommend it to the legislatures of the respective states to provide for the restitution of all estates, rights, and properties, which have been confiscated, belonging to real British subjects; and also of the estates, rights, and properties of persons resident in districts in the possession of his Majesty's arms and who have not borne arms against the said United States.

Though the Treaty of Peace required the Congress of the Confederation to earnestly recommend the restitution of “all estates, rights and properties . . . belonging to real British subjects,” in practice the several states, not only ignored this, but also confis-

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cated loyalist property for "unpaid debts." Despite the resistance, on August 4th, 1790 an Act was passed which was Titled, "An Act making provision for the payment of the Debt of the United States." This can be found at 1 U.S. Statutes at Large pages 138-178. This Act for all intents and purposes abolished the States and created the Districts.<sup>161</sup> Thus, America is owned by the world financial powers.

This is key information to those involved in the Trust world. To make decisions without all the facts will cost you dearly.



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<sup>161</sup>

Steven Ames, "The Ultimate Decision"  
[http://www.theforbiddenknowledge.com/hardtruth/ultimate\\_delusion.htm](http://www.theforbiddenknowledge.com/hardtruth/ultimate_delusion.htm)

## Presentation 8 - Bill of Rights

To this date, *The Bill of Rights* is one of the most hotly contested documents in the United States. The constant effort to thwart freedom remains with us. From ancient rulers to those who would wiretap our lives into oblivion, we fight, defend and argue for our right to exist.

### An Alien Mind

The alien mind-set of some would enslave us all. Control and domination wax strong in their plans. Some believe humans are a subspecies designed to serve. All dressed up in human bodies, these "aliens" are true predators, and to reason with them is nearly useless. Losing a court battle only means we will see the same issue again. Robotically, they relentlessly attempt to damn our existence.<sup>162</sup> Narrow-minded, they forever wish to destroy or enslave the creativity of Earth's people. It is pure madness.

### What You Would Lose

A quick study of cases shows that it is the government that challenges these sacred laws. If you have not read the *Bill of Rights* recently, take a good look at these rights now. Without it, you could be in debtor's prison, might not have controversial books, like this one, to read, would have no right to own a gun, could be put in prison and lost there, have your papers seized for no reason, and your life ended without the recourse of your family. Of all these Amendments, the one most profound is the Tenth Amendment, where it states all rights not given to the government remain the rights of the states. Here is the evidence that the federal government serves the states, not the other way around.

This is the one document that makes the United States a most different place, giving the people a chance for a real life.




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<sup>162</sup> *The Dietary Supplement, Health & Education Act of 1993, S 784* restricting natural remedies has been introduced every two to three years using various names, including 2007. This is a demonstration of a never-ending attempt to control food and remedies that heal. Couple this with the Monsanto effort to put a patent on seeds, and we know that nothing has changed from the time of the Quakers, Appendix A of Volume I.

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### *Bill of Rights*

#### *Amendment I*

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

#### *Amendment II*

A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

#### *Amendment III*

No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

#### *Amendment IV*

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

#### *Amendment V*

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

*Amendment VI*

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

*Amendment VII*

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

*Amendment VIII*

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

*Amendment IX*

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

*Amendment X*

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.



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## Appendix K

### Registers and Certificates

Volume I mentions the Lewis Cass Payseur Trust. At one time, probably one of the largest Trusts in the world, it owned a long list of impressive assets. Because of its size, it came under investigation of Congress.

### Hidden TCUs

The information about the Trust came to light, through the current-day heirs discovering the TCUs in a vault. These financial instruments proved their claim on the Trust assets. A long investigation evolved the facts as outlined in Volume I. This Trust became subject to plunder by some of the biggest names in the history of the financial world. Here, again, we see when the Trust is not administered for the Beneficiaries, the focus dissipates. The finances of this Trust have long been in disarray, and whether the heirs will ever see the funds was a subject of debate when Chapter 10<sup>163</sup> was first published.

### Right of Disbursement

Note, though, that holding TCUs proved their right to the Beneficial disbursement. Because TCUs are financial instruments, when you get them, keep them safe. The Trust is likely to grow under good management, and if you want it to grow, you may want to participate in that management.



### Sample Format 44 - Trust Capital Unit Register

The story about this Trust Capital Unit Register is given in Chapter 10. Since there was not enough space to include all of the columns, we deleted the last one titled "Trustee Authorization." Because of the seriousness of financial allocation, it is best to have the

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<sup>163</sup>

Alex Christopher, *Pandora's Box*, Pandora's Box Publishing, Spokane, Washington (1993)

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Trustees initial, or draw a diagonal line across, several of them, and one of the Trustees can sign his or her name to cover many names.

Our experience is that the Trust Capital Unit Register in an active Trust needs to be updated or reviewed at least twice a year.

### TRUST CAPITAL UNIT CERTIFICATE REGISTER

of

### Sherman M. Patterson Family Trust

January 10, 2006

Issue Date	Holder's Name	Qty	Cert. No.	Date Transfer- red/Nota- tions	Amt. Re- turned	Active TCUs	Total Assigned
10/10/01	Terrance A. Wilson, Grantor	5	001				5
10/10/01	Terrance A. Wilson, Exchanger	60	002				65
10/10/01	Frank C. Ellis, Trustee	125	003			3	190
10/10/01	Kriss L. Heffl, Trustee	50	004			3	240
3/9/02	Terran Blue Trust, Beneficiary	10	008				250
3/5/02	Muriel J. Allen, Pro- tector	5	005				255
3/5/02	Courtney S. Brown, General Manager	5	006	May 16, 2005	5		255
3/5/02	Anita L. Willon, Executive Secretary	30	007			3	285
3/16/02	Wilson Amber Trust, Exchanger	1	009				286
3/16/02	Blue Crystal Man- agement Exchanger	5	010				291
5/12/04	James E. Hughes, Trustee	50	011	September 24, 2004	25		316

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Issue Date	Holder's Name	Qty	Cert. No.	Date Transfer-red/Notations	Amt. Returned	Active TCUs	Total Assigned
9/22/04	Thomas J. Holden, Trustee	50	012			1	366
2/8/05	Jennifer Stunner, Successor Trustee	10	013				376
2/8/05	Anita L. Willon, Exchanger	45	014				421
5/6/05	Alto Management, Exchanger	15	015				436
6/11/05	Charles S. Morrison, Beneficiary	20	16				456
<b>1/10/05 Split</b>	<b>Additional 1,500 Units added = Total Available 2000</b>						431
1/10/06	Terrance A. Wilson, Grantor	5	17				436
1/10/06	Terrance A. Wilson, Exchanger	60	18				496
1/10/06	Frank C. Ellis, Trustee	125	19				621
1/10/06	Kriss L. Heff, Trustee	50	20				671
1/10/06	Muriel J. Allen, Protector	5	21				676
1/10/06	Anita L. Willon, Executive Secretary	30	23				706
1/10/06	Terran Blue Trust, Beneficiary	10	24				716
1/10/06	Wilson Amber Trust, Exchanger	1	25				717
1/10/06	Blue Crystal Management Exchanger	5	26				722
1/10/06	James E. Hughes, Successor Trustee	25	27	See Certificate No. 011			747
1/10/06	Thomas J. Holden, Trustee	50	28				797

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Issue Date	Holder's Name	Qty	Cert. No.	Date Transfer-red/Notations	Amt. Returned	Active TCUs	Total Assigned
1/10/06	Jennifer Stunner, Successor Trustee	10	29				807
1/10/06	Anita L. Willon, Exchanger	45	30				852
1/10/06	Alto Management, Exchanger	15	31				867
1/10/06	Charles S. Morrison, Beneficiary	20	32				887
3/4/06	Granier Simpson Trust	15	33				902

Granier Simpson Trust is addressed in Appendix D, Sample Format 22.



### Sample Format 45 - Register of Units of Beneficial Interest (UBI)

This register is used in conjunction with the Trust Capital Unit Register, and in some Trusts, Units of Beneficial Interest are not used. When using a two-tiered Unit system, management becomes more complex. The Grantor decides how the distribution needs to happen at the beginning of the Trust, and expresses this intent through the Trust Indenture. Some Grantors choose to make all Beneficiaries Trust Capital Unit holders.

#### UBIs for Grandchildren

This two-tiered system can be more applicable when there are many grandchildren, and it is best they earn their right to have TCUs. Further, if there are Beneficiaries who cannot be trusted, it is best to make them holders of Units of Beneficial Interest instead of Trust Capital Unit holders.

#### Audit of Trust

Beneficiaries have the right to see the Trust books and ask for an audit. We suggest those who hold Units of Beneficial Interest are only on the Asset Holding Trusts. This limits their ability to get into the Management or Business Trust where substantial cash flow occurs.

**REGISTER OF UNITS OF BENEFICIAL INTEREST**

of

**Movian Allen Trust**100 TCUs

<b>Issue Date</b>	<b>Holder's Name</b>	<b>Quantity</b>	<b>UBI No.</b>	<b>Date Transfer- red</b>	<b>Total Certif- icates</b>
10/3/05	Peter Allen	10	1		10
10/3/05	Carl Allen	10	2		20
4/10/06	Cassey Allen	3	3		23
6/20/06	Peter Allen	1	4		24
12/15/06	Peter Allen	1	5		25
12/15/06	Carl Allen	1	6		26

**Sample Format 46 - Certificates**

The Certificates shown give you an idea of the formality of it. We use a different Certificate design to ensure the TCUs and the Units of Beneficial Interest Certificates are separate. In some Trusts, the Certificates are different colors.

Because the samples are so small, we have reproduced the wording from a TCU. The text for the UBI Certificates is similar, differing only in small details.

## Art of Passing the Buck, Volume II

Pursuant to that Declaration of Contract and Indenture dated October 10, 2001 here, creating the Sherman M. Patterson Family Trust Organization and in compliance with the terms and conditions contained there

### ***Charles S. Morrison, Beneficiary***

holds these Certificate units subject to the following provisions, terms and conditions:

- 
- The holder shall be entitled to his or her proportionate share of all distributions declared and made by the Trustees in the ordinary course of business or upon liquidation of the Trust Organization.
- 
- All units are fully paid and nonassessable. No liability for the actions of the Trust or Trustees shall inure to the holder.
- 
- The holder has no rights, powers, privileges or interest in or control over the assets of this Trust Organization. These are nonvoting Trust Units.
- 
- The holder only transfer these units only in compliance with the restrictions, terms and conditions set forth in the Declaration of Contract and Indenture. A transfer must be expressly endorsed as provided on the reverse side.
- 
- This Certificate becomes null and void, and of no force or effect at the death of the lawful holder.
- 
- Distribution cannot be pledged or applied to debts or obligations. Distribution can be given only to the name on this TCU's Certificate.
- 

Issued on June 11, 2005 as authorized by the Board of Trustees.

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Frank C. Ellis, for the Board of Trustees

**Sherman M. Patterson Family Trust**  
**A Common Law Trust Organization**

Certificate No.\*016\*

**Trust Capital Units**

Units Issued\*20\*

Pursuant to that Declaration of Contract and Indenture dated October 10, 2001 here, creating the Sherman M. Patterson Family Trust Organization and in compliance with the terms and conditions contained there

**Charles S. Morrison, Beneficiary**

holds these certificate units subject to the following provisions, terms and conditions:

- The holder shall be entitled to his or her proportionate share of all distributions declared and made by the Trustees in the ordinary course of business or upon liquidation of the Trust Organization.
- All units are fully paid and non assessable. No liability for the actions of the trust or Trustees shall inure to the holder.
- The holder has no rights, powers, privileges or interest in or control over the assets of this Trust Organization. These are non-voting Trust Units.
- The holder can only transfer these units in compliance with the restrictions, terms and conditions set forth in the Declaration of Contract and Indenture. A transfer must be expressly endorsed as provided on the reverse side.
- This certificate becomes null and void, and of no force or effect, at the death of the lawful holder.
- Distribution cannot be pledged or applied to debts or obligations. Distribution can only be given to the name on this Trust Capital Units Certificate.

Issued on June 11, 2005 as authorized by the Board of Trustees.

  
Frank C. Ellis, for the Board of Trustees

*Embossed  
with gold seal  
here*



**Movian Allen Trust**  
**A Common Law Trust Organization**

Certificate No.*001*	<b>Units of Beneficial Interest</b>	Units Issued*10*
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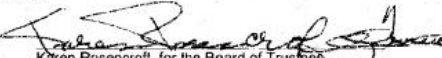
Pursuant to that Declaration of Trust dated October 3, 2005 here, creating the Movian Allen Trust Organization and in compliance with the terms and conditions contained there

**Peter Allen**

holds these certificate units subject to the following provisions, terms and conditions:

- The holder shall be entitled to his or her proportionate share of all distributions declared and made by the Trustees in the ordinary course of business or upon liquidation of the Trust Organization.
- All units are fully paid and non assessable. No liability for the actions of the trust or Trustees shall inure to the holder.
- The holder has no rights, powers, privileges or interest in or control over the assets of this Trust Organization. These are non-voting Trust Units.
- The holder can only transfer these units in compliance with the restrictions, terms and conditions set forth in the Declaration of Trust. A transfer must be expressly endorsed as provided on the reverse side.
- This certificate becomes null and void, and of no force or effect, at the death of the lawful holder.
- Distribution cannot be pledged or applied to debts or obligations. Distribution can only be given to the name on this Units of Beneficial Interest Certificate.

Issued on October 3, 2005 as authorized by the Board of Trustees.

  
Karen Rosencroft, for the Board of Trustees

Emboss with  
gold seal here

## Appendix L

### Taxes

Despite the controversy about the legality of taxes, whether direct or indirect<sup>164</sup>, and the words in the U.S. Constitution limiting the taxing ability<sup>165</sup>, the Internal Revenue Service created, through opposition, a new consciousness about keeping one's records in order. The details needed to "prove" what ones owes, mandates an awareness about finances that earlier generations did not need.

### Education and Taxes

Keeping detailed records is one of the many keys to life. The more uneducated, the less likely there are records. Because of the complex mathematics involved, as well as the many forms on which to voluntarily report one's financial status, only an educated<sup>166</sup> population can be this thoroughly taxed.

From this need to keep our numbers straight, sophisticated accounting applications developed. Tables and charts about trades, exchanges, stock transitions exist, so refined they boggle the mind of even those who work in the financial arena.

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<sup>164</sup> *Hayden v. United States*, 3 Dall. (3 U.S.) 171 (1796), the first case to come before Court on this issue.

<sup>165</sup> *U.S. Constitution, Article I, §9, Cl 4*, "No Capitation, or other direct. Tax shall be laid unless in Proportion to the Census or Enumeration herein before directed to be taken."

<sup>166</sup> Some argue only people who are uneducated could be this taxed, for in the United States only an indirect tax can be applied to the population, and ignorance of the laws causes reporting. As we have mentioned many times, we are not here to argue tax issues, but only to touch upon them enough to educate Trustees so they can be more informed decisions.

## **Art of Passing the Buck, Volume II**

### **Beneficiary Reports**

Within the Trust world, sophisticated accounting demands reporting to the Beneficiaries. In some Trusts, this occurs only if the Beneficiaries request the information; in other Trusts, a yearly reporting is mandatory.

### **IRS Validates Certificates**

Because of the challenges about the proper application of the Common-Law Trust with the IRS, we learn through Tax Court decisions what essential legalities, as discussed in Chapters 11, 12, 13 and 14, belong in this Trust classification, and their proper use. Choosing any scam Trust court case reveals a multitude of previous cases shown in footnotes. A study of them reveals the proper management of a Trust, even if not obvious in the faulty Trust under investigation.

So many times the issue of Certificates and their improper use becomes key to destroying the Trust, that, conversely, it confirms the use of Certificates. The use of Trust Certificates is proper, but their misapplication is not. Because of mismanagement, the people examined paid taxes on Trust income. Thus by reverse reasoning, the proper management of the Trust and use of Certificates becomes supported.

### **Retained Powers**

This Appendix gives you information about taxes in general. As we mentioned several times, we do not deal directly in the realm of taxation, because it is secondary to the issue of Beneficiary welfare. We leave tax decisions to the Grantor, who with his or her retained powers, decides what is income and corpus.

### **Presentation 9 - Employer Identification Number (EIN)**

To get an EIN, fill out an SS-4 application. We are not including the SS-4 form because you should fill it out with professional help.

### **Social Security Number**

The SS-4 needs the name and Social Security Number of the Grantor, the name of the first Trustee who signs it, and the Trust address. As mentioned before, we recommend for clarity the Trust has its own identity and thus rent a private mail box. We do not recommend a P. O. Box because of various mailing limits.

**SS-4**

Once the SS-4 is filled out, it can be faxed or mailed to the IRS. It is best, though, if it is called in to them. This is the easiest, as sometimes the SS-4, when mailed, becomes lost or the response time is lengthy. Once the IRS assigns a number, it sends the letter shown in Presentation 9. This authenticates the Trust from the view of the financial institutions, which sometimes need to see the letter.

**Backup Copy**

When you get the EIN letter, keep it in the section of your Trust book dedicated to Taxes, and make a copy to ensure that if it is lost you have a backup.

The Employer Identification Number used herein is fictitious. If it happens to match one in use, we apologize for the coincidence.

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
OGDEN UT 84201

**DATE OF THIS NOTICE** 8/31/04  
**NUMBER OF THIS NOTICE**  
**EMPLOYER IDENTIFICATION NUMBER** 47-6112947

FORM SS-4  
0536007036 B

Allen-Jay Family Trust  
Darren Portinkin, Trustee  
492 East Elm St., No. 84  
Canton, OH 50399

FOR ASSISTANCE CALL US  
AT:  
1-800-829-1040

OR WRITE TO THE  
ADDRESS SHOWN AT THE  
TOP LEFT

IF YOU WRITE, ATTACH  
THE STUB OF THIS NOTICE

**WE ASSIGNED YOU AN EMPLOYER IDENTIFICATION NUMBER (EIN)**

Thank you for your Form SS04 Application for Employer Identification Number (EIN). We assigned you EIN 47-6112947. This number will identify your estate of trust. If you are not the application, please contact the individual who is handling the estate or trust for you. Please keep this notice in your permanent records.

Use your complete name and EIN shown above on all federal tax forms, payments and related correspondence. If you use any variation in your name or EIN, it may cause a delay

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in processing and incorrect information in your account. It also could cause you to be assigned more than one EIN.

Based on the information shown on your Form SS-4, you must file the following forms(s) by the date we show.

Form 1041

04/15/2005

Your assigned tax classification is based on information obtained from your Form SS-4. It is not a legal determination of your tax classification and is not binding on the IRS. If you want a determination on your tax classification, you may seek a private letter ruling from the IRS under the procedures set forth in Rev. Proc. 98-01, 1998-1 I.R.B. 7 (or the superceding revenue procedure for the year at issue).

If you have questions about the forms shown or the date they are due, you may call us at 1-800-829-1040 or write to us at the address shown above.

## **Presentation 10 - Federal Taxation Guidelines**

Because the Internal Revenue Code and associated tax laws came into existence about 1920, many issues about taxation were clearer then. Personal income tax had not yet become readily accepted. For that reason, the original meaning and intent then are now lost to us.

### **IRS Personnel Not Educated in Tax Law**

Many IRS agents are not educated about Trust taxation, and consider most Trusts scams and bogus in some way. Few IRS personnel know these references exist and fewer still understand them.

From the experience of some of our Trustees, many lawyers who work for the Department of Justice have little to no experience in the intricacies of Trust taxation.

The below information may surprise some tax professionals. The references shown in *33 Am Jur 2nd* have not been edited.

◆ ◆ ◆

### Sherman M. Patterson Family Trust

<b>Subject:</b>	Federal Taxation Guidelines	<b>Number:</b>	924n
<b>Refer- ence(s):</b>	<i>33 Am Jur 2nd</i> , pages 895, 896	<b>Revision:</b>	
<b>Objective:</b>	To understand taxable income to Beneficiaries	<b>Distribute to:</b>	Board of Trustees
<b>Date Cre- ated:</b>	38366	<b>Today's Date</b>	August 18, 2007 (12:00am)

#### Policy:

Federal tax returns, filed on a 1041, shall be in compliance with tax guidelines.

#### Specific References:

¶ 2765 **When income is taxable to a Beneficiary** ...the fact that income is required to be distributed is sufficient to tax it to the Beneficiary, whether or not actual distribution is made. Not even a bona fide controversy and litigation over the Trustee's duty to make a particular distribution affects the nature of the income as currently distributable....taxable to the Beneficiary as income in the year of the Trust in which the fiduciary received a controversial item, not for the later year in which a court made its adjudication . . .

¶ 2767 **Distributions of property in kind.** . . The amount includable depends upon whether or not the Trust or estate elects to recognize gain or loss on the distribution. (2) The fair market value is determined at the time of distribution.

¶ 2768 **Distribution in kind of Trust or estate assets non-pro rata** ... Disproportionate transfers are taxable. [Formula for taxation is:] A tax-free pro rata distribution, followed by a taxable exchange by the Beneficiaries to achieve the intended result.

¶ 2769 **Certain gifts and bequests not taxable to Beneficiaries**....lump sums, types of gifts, and three installment rule.

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### Procedure:

Check with appropriate tax authorities to determine final values and taxable income.



### Presentation 11 - Former IRS Commissioner Speaks Out

"People are kidding themselves. They don't have the buying power they used to have. A lot of the people living today don't know what the buying power of success was before we decided to use excessive income taxes to punish success and estate and gift taxes to force every generation to start from scratch." (Emphasis added.)

T. Coleman Andrews, IRS Commissioner, 1953 to 1955

From U.S. News and World Report<sup>167</sup> interview with Mr. Andrews:

**Q** The income tax law must be written pretty well—it's raising annually about 52 billion dollars of revenue—

**A** I'm not saying that the income tax doesn't raise a lot of money, because it does. In fact, I think it can be shown that it raises too much. But what I'm talking about is the damage that it's doing. The minimum rate of 20 per cent takes a whale of a slug—\$400—out of a taxable income of \$2,000. I sure wouldn't want to pay that much if my income were that low. But it hits the people in the middle brackets even harder and is slowly but surely destroying the middle class.

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<sup>167</sup>

Writer unknown. "Why The Income Tax is Bad. Interview with T. Coleman Andrews, Former Commissioner of Internal Revenue." *U.S. News and World Report*, May 25, 1956

**Presentation 12 - Structuring and Reform Act of 1998**

The IRS pays no attention to this Act. This, though, does not negate it as law. It only means for you to use it, you need to fight. There is only one page shown here, enough so you can find it on the Internet, or in the law library.

Your interest in this revolves around the subject of jurisdiction.





<http://www.ar.gov.au/part13/ch01c02.html>



- 13.1.2.1 Background
- 13.1.2.2 Highlights
- 13.1.2.3 Release of 2019 Interim Report
- 13.1.2.4 Key Areas of Focus: Enhancing the Resilience of the Credit Administration Service Independence
- 13.1.2.5 Reforms to Improve the Credit Administration Service
- 13.1.2.6 Reforms to Enhance the Credit Administration Service

### Background

1. The Internal Revenue Service Restructuring and Reform Act of 1998 (RRA98) became law when the President signed the legislation on July 22, 1998. This new law ushered in dramatic changes in tax law as well as in the structure and functioning of the Internal Revenue Service. The changes affecting the IRS focus mainly on improving customer service and expanding taxpayer rights.

### Highlights

- 1. RRA98 provides tax relief, such as:
  - Reduction of the long term capital gains holding period
  - Education incentives
  - Principal residence gain exclusions
  - EIC expansion
  - New IRAs
  - Estate & Gift provisions
- 2. Other RRA98 sections provide expanded rights or privileges in areas such as:
  - Interest calculations for taxes and refunds
  - Lien, levies, seizures
  - Audit criteria
  - Tip reporting
  - Offers in compromise & installment agreements
  - New "Due Process" requirements
  - More inclusive innocent spouse provisions
  - Third party summonses
- 3. RRA98 sections that affect all or many IRS employees:
  - An Oversight Board will oversee certain IRS plans and practices
  - New disciplinary provisions for employee misconduct — RRA98 § 1202 (see IRM 13.1.15, Customer Complaints/RA98 § 1203 Procedures)
  - IRS to be reorganized into business operating units
  - New rules for making third party contacts — RRA98 § 3417

### **Presentation 13 - Gold and Silver Exchange Values**

As you will discover in this article, the issue of taxation and gold or silver coins is a sticky one. We include this so Trustees can know how to handle collectibles, and coins in general.



#### **American Gold Eagle preys upon the IRS**

*by Ed Haas*

*The MUCKRAKER REPORT<sup>168</sup>*

March 4, 2008 – If a homeowner hires a handyman to do some work around his or her house, and pays for the handyman's services with a \$50 bill, how much would the handyman claim as income for tax purposes? According to IRS tax assistance representative, Bob Knierim, the handyman would need to claim the \$50 dollars as income.

But what if the homeowner paid the handyman with a circulated \$50 American Gold Eagle? According to Knierim, who the Muckraker Report interviewed on February 21, 2008, the handyman would be required to pay the market value rather than face value of the \$50 dollar gold coin. The market value of \$50.00 American Gold Eagle coins changes daily, but at last check, was approximately \$980.00.

When pressed for the tax law or rule that supports the IRS claim that taxpayers are required to claim face value on certain legal tender and market value on others, Knierim referenced Publication 17 as the "catch-all" for "these types of tax questions."

Indeed, Publication 17, in the section, Miscellaneous Deductions, does address gold coins, usually in the context of holding them as collectibles and investments. For example, a rare, non-circulating gold coin would be considered a capital asset, similar to gems, jewelry, stamps, antique household furnishing, and stocks and bonds. These

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<sup>168</sup>

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## Art of Passing the Buck, Volume II

types of items are defined by the IRS as investment property, and investment property is considered a capital asset.

However, in the scenario of being paid for services rendered, the handyman was not holding the American Gold Eagle as an investment – the handyman was holding it as legal tender in exchange for labor.

### *2007 American Gold Eagle*<sup>169</sup>

The American Gold Eagle is legal tender just like a quarter, dime, nickel, or penny. The 1-oz Gold Eagle has a face value of \$50. The ½-oz Gold Eagle has a face value of \$25. Minted at West Point, NY, also available is a ¼-oz Gold Eagle with a face value of \$15 and a 1/10-oz Gold Eagle with a face value of \$5. The U.S. Government introduced the American Gold Eagle in 1986. The 1-oz American Gold Eagle contains exactly 1-oz of 22-karat gold.

Can the IRS have it both ways? Can the IRS claim that taxpayers must pay face value on certain legal tender and market value on others. When questioned about a more specific rule that directly addressed this type of tax question, Knierim admitted that no rule existed.

The Muckraker Report asked Knierim what the market value of a \$50 bill was in today's market. He could not say. When confronted with the fact that the cost for the materials used to produce a \$50 bill amounted to approximately 6 cents, Knierim conceded the point while insisting that for tax purposes, circulating gold coins fall under a different category. The Muckraker Report asked, "A category in which there is not a specific rule or law that defines the category?" Knierim answered, "yes."

The IRS is once again on a slippery slope. The U.S. Constitution requires the minting and circulating of coinage, as demand requires. It also is required that the coins be assigned a value for the purpose of legal tender. That value, the face value, is the amount stamped on the coin. The back of a quarter is stamped with quarter dollar. The back of a nickel is stamped with five cents. The market value of these coins is

**The image of  
the American  
Gold Eagle  
Coin can be  
seen on The  
Muckraker  
Report web  
site**

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<sup>169</sup>

To see both sides of the coin, in color, please visit The Muckraker Report at: <http://muckrakerreport.com/id31.html>

irreverent when used as legal tender. When presented for a purchase, or when received as a wage, legal tender laws require that they be accepted at face value.

Imagine paying taxes on the market value of cash! It costs the Federal Reserve approximately 6 cents to produce any bill, regardless of face value. If you earned \$75,000.00 in wages last year, paid to you in Federal Reserve Debt Notes (paper money), the market, intrinsic value of the money received is approximately \$4500.00 dollars if paid in \$1 bills. No doubt, the IRS opposes any suggestion that taxpayers paid in fiat paper money should be allowed to only pay tax on the intrinsic value of the currency. Clearly the IRS expects taxpayers to pay face value on their worth less dollars.

The market value of a \$100 bill is 6 cents. The market value of a \$20 bill is 6 cents. The market value of a \$1 bill is 6 cents. After all, paper currency is no longer backed by gold or silver in the United States. It's just paper and ink today with some fancy artwork and anti-counterfeiting measures installed to prevent unauthorized counterfeiting. A great argument can be made that those printing the bills are master counterfeiters themselves.

Not so long ago, U.S. paper currency was called a Silver Certificate. The face of a 1957 \$1 bill read:

This certifies that there is on deposit in the Treasury of the United States of America, One Dollar in Silver payable to the Bearer on Demand.

#### 1957 One Dollar Silver Certificate

According to Knierim, the IRS can have it both ways. It can require taxpayers to claim face value on a \$20 bill rather than its intrinsic value, which is approximately 6 cents, while requiring taxpayers to claim market value on \$50 American Gold Eagle, which is nearly \$1000.00 today.



While the IRS might want to believe it can operate in its own orbit, the law appears to be on the people's side on this issue. In 1910, see *Ling Su Fan v. U.S.*, 218 US 302,

the legal distinction of coins, the distinction in which the IRS now claims it has no specific rule, clearly dictated:

These limitations are due to the fact that public law gives to such coinage a value which does not attach as a mere consequence of intrinsic value. Their quality as legal tender is an attribute of law aside from their bullion value. They bear, therefore, the impress of sovereign power, which fixes value and authorizes their use in exchange.

In *Thompson v. Butler*, 95 US 694 (1877) the courts wrote:

A coin dollar is worth no more for the purposes of tender in payment of an ordinary debt than a note dollar. The law has not made the note a standard of value any more than coin. It is true that in the market, as an article of merchandise, one is of greater value than the other; but as money, that is to say, as a medium of exchange, the law makes no difference between them.

There is a recent case in point as reported by the Las Vegas Review Journal. Known as the Kahre Case, on September 20, 2007 the Review Journal reported that a jury hung on 161 charges of income tax invasion and conspiracy faced by nine defendants. Robert Kahre, a local business owner was paying his employees with circulating gold and silver coins. The defendants in the trial had not paid taxes according to the market value of the gold and silver coins. The defendants relied upon the face value of the coins for tax purposes.

Defense Attorney Michael Kennedy confirmed what the IRS told the Muckraker Report – the Internal Revenue Service had never before provided guidance on how to handle gold and silver coins that circulate, only on non-circulating collectable coins.

When the Muckraker Report informed IRS representative Bob Knierim of the recent outcome in the Kahre case, Knierim said, “That case does not establish a legal precedent” and “The IRS is free to charge others that might attempt the same thing.”

Leaving such unfettered discretion in the hands of the IRS is clearly a mistake given the fact that legal precedent has already been established:

A coin dollar is worth no more for the purposes of tender in payment of an ordinary debt than a note dollar. The law has not made the note a standard of value any more than coin. It is true that in the market, as an article of merchandise, one is of greater value than the other; but as money, that is to say, as a medium of exchange, the law makes no difference between them.

## APPENDIX L

The defense rests. The IRS cannot have it both ways. Yet it will continue to try through malicious prosecutions that cost American taxpayers tens of thousands to defend against, even though such cases should be immediately dismissed upon filing for lack of evidence and standing.

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## Appendix M

### Living Trust and Common-Law Trust Comparison

Throughout Volume II, we have presented a Common-Law point of view. Here we focus on the direct comparison of both systems through a 2007 court case, *Brown v. Labow*.

We present a complete case for comparison with the Common-Law Trust format. As with many court cases, we do not know the reasons why the Grantor made the decisions he did, we only know the results. In *Brown v. Labow*, we are left wondering why Rubin, the Grantor, chose to change the percentage allocated his sons.

Trustees of all Trust types need to spend time reading court cases. Even if this is a once a year exercise, each case is enlightening about Trust management. This one not only explores the entire issue of ademption, but is about Trustee conduct, what is acceptable, and what is not.

This case is randomly selected. It was **not** chosen for any particular reason.



### Presentation 14 - Statutory Ademption for Revocable Trusts

In cases such as *Brown v. Labow*, the Grantor may have had muddled thinking prior to becoming incompetent. This may explain why he changed his mind.

Because a Living Trust serves the Grantor first, all the assets can be used for the Grantor's benefit, leaving less or nothing for the Beneficiaries. An ademption occurs when:

- Assets listed in the Trust are cashed out by the Grantor, leaving nothing for the Beneficiary.



## Art of Passing the Buck, Volume II

- The Grantor removes certain assets from the Trust through amendments.
- The Grantor revokes certain gifts or allocations to a Beneficiary.

In this court case, the question is whether an ademption occurred when the corporate stock was sold. This changed its form from how it was listed in the Trust assets, and thus was it subject to the terms of the Trust?

### *Less Than . . .*

The underlying issue here, though, is why was one Beneficiary favored over the other? If this had not occurred, we doubt the issue of an ademption would have been raised.

When a Trust, such as this one, holds substantial assets, it is likely that when one Beneficiary gets less than the other, a lawsuit occurs, as millions are at stake.

As you work through the various aspects presented here, reorganize it into a Common-Law Trust in your mind to see how these issues play out. We created a Business Trust and a TCU allocation of Certificates where Mr. Rubin Brown, the Grantor of the Trust, exchanged into the Trust 70% of the stock, naming his two sons Beneficiaries along with his niece, and his long-time companion, Ms. Joseph. In this make believe setup, Mr. Rubin Brown keeps 100 Trust Capital Units, and the income of 70% of the stock flows into the Trust. Distributions occur in reference to Mr. Rubin Brown's original assignment of TCUs, or UBIs, to the Beneficiaries. Study this TCU register to identify the people involved in this legal battle. For the purpose of the explanation and comparison, the TCUs are as follows:

## Rubin Brown Fictitious Irrevocable Trust

### Trust Capital Unit Register

Date	Name	TCUs	No.	Units Available
				500
Feb. 14, 1983	Rubin Brown, Grantor	5	1	495
Feb. 14, 1983	Rubin Brown, Exchanger	100	2	395
Feb. 14, 1983	James P. Nelson, Trustee	115	3	280
Feb. 14, 1983	Frumeh Labow, Trustee	105	4	175
Feb. 14, 1983	Lorrin C. Brown, Beneficiary	25	5	150
Feb. 14, 1983	Ross G. Brown, Beneficiary	45	6	105
Feb 14, 1983	Evelyn Joseph, Beneficiary	30	7	75
Feb 14, 1983	Sandy Wolf, Beneficiary	25	8	50
Mar 8, 1984	Pramer Trust, Beneficiary	20	9	30

We added Pramer Trust to hold the residential property mentioned in this court case.

Using this format, we can compare the administration of this Trust to how it may have occurred in a Common-Law Trust setup.

#### EXPLANATION AND COMMENTARY ABOUT THE FOLLOWING COURT CASE IS IN ALL CAPS.

Comparison with a Common-Law Trust is in this type style.

The entire court case is presented here unedited; we have reformatted it to separate sequentially listed items. Bullets have been added for ease of identification.

## **Art of Passing the Buck, Volume II**

### **Brown v. Labow (2007) , Cal.App.4th**

[No. B195803. Second Dist., Div. Five. Dec. 5, 2007.]

LORRIN BROWN, Plaintiff and Appellant, v.  
FRUMEH LABOW et al., Defendants and Respondents.

(Superior Court of Los Angeles County, No. BP043047, Michael I. Levanas, Judge.)

(Opinion by Turner, P. J., with Mosk, J., and Kriegler, J., concurring.)

#### **COUNSEL**

Plotkin, Marutani & Kaufman, Jay J. Plotkin and Warren W. Kaufman for Plaintiff and Appellant Lorrin Brown.

Bloom & Rutenberg and Gary M. Rutenberg for Defendant and Respondent Frumeh Labow.

Ervin Cohen & Jessup and Reeve E. Chudd for Defendant and Respondent Evelyn Joseph.

Tyre Kamins Katz & Granof and Leah K. Phillips Falzone for Defendant and Respondent Ross G. Brown. {Slip Opn. Page 2}

#### **OPINION**

TURNER, P. J.-

#### **I. INTRODUCTION**

Lorrin Brown fn. 1 challenges two orders. First, Mr. Brown challenges an order dismissing a petition which sought a determination that the liquidation and dissolution of Brown Wholesale Electric Supply Company (“Brown Wholesale Electric”) did not cause an ademption [Revocation of the Trust or a portion of the Trust] of the specific gifts of its stock.

WHEN THE STOCK WAS SOLD, IT WAS ASSUMED THE STOCK WAS NOT IN THE TRUST. WHEN THE TRUST WAS EXAMINED, THE STOCK WAS LISTED IN THE 10<sup>TH</sup> AMENDMENT OF THE RUBIN BROWN LIVING TRUST.

In the Common-Law Trust system, amendments are not necessary. The Trustees have the ability to expand the Trust administration if it is not contrary to the Indenture. Further, the stock is under direct control of the Trustees.

The stock was contained in the Rubin Brown Living Trust ("the trust") under the Tenth Amendment to the trust (dated October 10, 1995). Second, Mr. Brown appeals from a probate court order quashing acceptance of a settlement offer pursuant to Code of Civil Procedure section 998.

THE TENTH AMENDMENT CHANGES THE PERCENTAGES OF THE BENEFICIARIES, MR. RUBIN'S TWO SONS, LORRIN AND ROSS. LORRIN'S PORTION BECAME 10% FROM 30%, CAUSING MOST OF THE TROUBLES WITH THIS LIVING TRUST.

Using the Rubin Brown Fictitious Irrevocable Trust setup, the change of Beneficiary percentage is handled through a Minute. Rubin Brown allocates his 100 Trust Capital Units as Exchanger and his 5 Trust Capital Units as Settlor when he dies, to his children and states the percentage. Returned first to the Board of Trustees for redistribution, the Trustees could change Mr. Rubin's recommendation to make it more even between the two sons. This might occur if they knew Mr. Rubin made his decisions when he was not in his full mental capacity, or because going to court might be more expensive than allocating a larger percentage to Lorrin.

The 10% and 90% division, happening in the 10<sup>th</sup> Amendment of the Rubin Brown Living Trust, would only pertain to the 105 TCUs Rubin Brown holds in the Fictitious Irrevocable Trust. The TCUs, number 005 and 006, set up on the original Fictitious TCU Register and allocated to his children are not

## **Art of Passing the Buck, Volume II**

likely to change unless, in the eyes of the Trustees, Lorrin Brown acts against the Trust or against his father.

### **THE SETTLEMENT OFFER IS LATER EXPLAINED.**

We reverse the order dismissing a petition which sought a determination that the liquidation and dissolution of Brown Wholesale Electric Supply Company ("Brown Wholesale Electric") did not cause an ademption.

THE PETITION WAS DISMISSED, MEANING THAT THE SELLING OF THE STOCK, BEFORE THE TRUSTOR DIED, DID NOT REVOKE THE TRUST. IF IT HAD REVOKED THE TRUST, THEN THE PERCENTAGE OF DISTRIBUTION COULD REVERT BACK TO THE ORIGINAL 30% AND 70% MENTIONED EARLIER IN THE RUBIN BROWN LIVING TRUST.

In a Common-Law Trust, this issue of the stock would never be a question, as the Brown Wholesale Electric Supply Company stock belong to the Trust and be under the total control of the Trustees.

Also, we affirm the order quashing acceptance of the statutory offer to compromise.

LORRIN BROWN SUED THE RUBIN LIVING TRUST TO RECOVER HIS PORTION OF THE INHERITANCE ORIGINALLY ALLOCATED TO HIM. THE EFFORT OF THE TRUSTEE, THE OTHER BENEFICIARIES AND LORRIN BROWN TO SETTLE THE DIFFERENCE WAS STOPPED BECAUSE THE RUBIN BROWN LIVING TRUST CLEARLY STATED THE INTENTION OF THE GRANTOR THAT HIS SON, LORRIN, RECEIVE ONLY 10%.

In a Common-Law Irrevocable Trust the dissatisfaction of Lorrin Brown about his father's decision to give him only 10% of the original TCUs (Numbers 001 and 002) allocated to Rubin Brown would be settled by the Protector. If Lorrin Brown wanted to sue the Common-Law Irrevocable Trust, his inheritance would be lost if a "no contest clause" was in the Indenture, or the Trust held ample evidence of not only the Protector's ability to settle the matter, but of Rubin Brown's

clear intention. It is likely, in this case, the litigation would not be worth the cost. The Trustees would be inclined to work something out, especially since they want to avoid breaches of privacy.

## II. BACKGROUND

Rubin created the trust on February 14, 1983, and named himself as trustee. The principal asset of the trust was 95 percent ownership of stock in Brown Wholesale Electric. Rubin had two sons, Mr. [Lorrin C.] Brown and Ross [G. Brown], both of whom worked for Brown Wholesale Electric. Mr. Brown and Ross were also officers, directors, and minority shareholders of Brown Wholesale Electric.

Over time, Rubin executed 12 amendments to the trust. The Ninth Amendment dated February 14, 1983, gave 30 percent of the stock to Mr. Brown and 70 percent to Ross. In the Tenth Amendment dated February 14, 1983, to {Slip Opn. Page 3} the trust, Rubin reduced Mr. Brown's gift to 10 percent of the stock and increased Ross's gift to 90 percent of the stock. Ross is the sole residuary beneficiary of the trust.

### THIS MEAN ROSS GETS WHAT IS LEFT OVER IN THE TRUST AFTER ALL PAYOUTS OCCUR.

Paragraph 6.01 of the Tenth Amendment to the trust provides in part: "SPECIFIC GIFTS as soon as administratively possible following the death of Trustor, Trustee shall distribute the following gifts: . . . [¶]

- ✓ Trustor's interest in ownership of the preferred and common stock of Brown Wholesale Electric Company shall be allocated and distributed outright to Trustor's two (2) sons, with ten percent (10%) thereof allocated and distributed to LORRIN C. BROWN, and ninety percent (90%) thereof allocated and distributed to ROSS G. BROWN.
- ✓ In the event either such beneficiary shall not survive to the date of distribution, such beneficiary's share shall be added to the residue of the Trust Estate and distributed pursuant to Paragraph 6.02 below."

HERE IS ONE OF THOSE SITUATIONS SETTING UP THE  
TEMPTATION OF ONE BENEFICIARY TO REMOVE THE  
OTHER. WE DO NOT KNOW WHY THIS REDUCTION OF  
BENEFICIAL INTEREST OCCURRED. IF WE KNEW THE  
BACKGROUND, WE MIGHT SEE ITS WISDOM. THIS IS ALSO,

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PROBABLY, ONE OF THE REASONS THE GRANTOR DID NOT REVEAL THE CONTENTS OF THE TRUST BEFORE HE DIED.

On July 25, 1996, Ross filed a petition for the appointment of a conservator of the person and estate of Rubin.

THIS MEANS RUBIN WAS UNABLE TO TAKE CARE OF HIMSELF, AND ANOTHER NEEDED TO BE APPOINTED TO HANDLE HIS FINANCIAL AND PERSONAL AFFAIRS. RUBIN MAY HAVE HAD A DURABLE POWER OF ATTORNEY FOR HEALTH CARE IN PLACE. IT IS NOT CITED OR MENTIONED.

### *Conservator and Trustee*

On September 9, 1996, Ms. Labow was appointed conservator of Rubin's person and estate. On October 16, 1996, Ms. Labow filed a petition to have herself appointed as successor trustee. Ms. Labow asserted that Rubin could no longer serve as trustee and the named successor trustees declined to accept the appointment.

*The October 16, 1996, petition alleged: Rubin "is unable to handle his own personal care and his own financial affairs and cannot act in any fiduciary capacity."*

The trust assets consisted of Rubin's residence and his shares in Brown Wholesale Electric; the value of the entire corporation was in excess of \$18 million; and no bond was required because there were no cash or other liquid assets. Ms. Labow requested, "[In] lieu of bond the court order that said stock shall not be assigned, transferred, alienated, or encumbered without [a court order] . . . and that a legend describing such restriction be prominently imprinted on the certificates evidencing such stock held by the [trust]."

In a supplemental petition filed November 25, 1996, Ms. Labow advised the court that the successor trustees, Benjamin Felton and First Interstate Bank, refused to serve due to substantial litigation over the conservatorship, as well as assets of the living trust which had been designated as charitable remainder trusts by Rubin.

NOTE THAT A CHARITABLE REMAINDER TRUST IS REFERRED TO AS A LIVING TRUST.

On December 4, {Slip Opn. Page 4} 1996, the probate court appointed Ms. Labow as the successor trustee of the trust as restated in the Ninth Amendment dated March 14, 1994. The December 4, 1996 order provides that:

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- ◆ Ms. Labow is not required to file a bond;
- ◆ the stock could not be transferred without a prior court order;
- ◆ and a legend stating the restriction should appear on the stock.

In the Common-Law Trust system, the Successor Trustee does not have any authority to act, but is in a training position until he or she becomes a Trustee. Here, while Mr. Rubin Brown is alive, she is referred to as a successor trustee in the Statutory system.

On January 9, 2001, Ms. Labow filed a first account current and report of successor trustee. Ms. Labow also requested:

- ◆ the settlement of accounts and payment of fees; an increase in bond to \$14,350,000;
- ◆ a release and substitution of surety; and for the authority to make interim monthly payments to trustee.

AT THIS POINT IT IS NOT CLEAR IF SHE IS TRUSTEE, OR ACTING AS SUCCESSOR TRUSTEE. FURTHER, IT SEEMS SHE IS REQUESTING TO PAY HERSELF.

Ms. Labow reported:

- ◆ the trust had income of \$13,954,848.04 during the reporting period;
- ◆ the charitable remainder trust litigation had been settled and approved by the probate court; the business (of which the conservatee, Rubin, owned 95.94 percent of the stock) was subsequently sold for \$24 million;
- ◆ and the payments were made to the conservatorship estate and then transferred to the trust.

THIS IS A LITTLE CONFUSING AS TO WHY THE PAYMENTS WERE FIRST MADE TO THE CONSERVATORSHIP ESTATE AND THEN TRANSFERRED TO THE TRUST. IT COULD BE THAT A TRUST ACCOUNT HAD NOT BEEN SET UP. THAT IS, ANY CASH FLOW GAINED FROM THE STOCK WHILE RUBIN WAS ALIVE WAS PUT INTO HIS PERSONAL CHECKING



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ACCOUNT. IT IS LATER STATED CLEARLY THAT THE SALE OF THE STOCK BELONGED TO THE TRUST.

According to Ms. Labow's account and report as trustee,

*"The 95.54% interest of the stock in Brown Wholesale Electric Company, owned by the within Trust and recovered for the benefit of the Trust and Trustor has been valued at [\$23,221,895.02], which represents the value after the sale of the assets, the payment of corporate debts, and the receipt of liquidating dividends."*

On March 6, 2001, the probate court issued an order settling the first account current and report of Ms. Labow and granting the petition as requested.

### ***Distribution***

On April 9, 2003, Ross and Mr. Brown filed an ex parte application to instruct Ms. Labow to distribute the sums of \$200,000 and \$100,000 to them respectively once in 2003 and again in 2004 if their father, Rubin, was still alive. The application was based on evidence that Rubin's assets in the trust were valued in excess of \$10 million and gifts had been made to others including Evelyn Joseph, his long time companion. The brothers argued that their father valued tax-efficient transfer of the assets and the distribution would be consistent with his wishes. They also argued that Ms. Labow did not oppose the distribution. Ms. Labow declared:

- ◆ a gift of the \$25,000 to Rubin's niece, Sandy Wolf, had already been made;
- ◆ Rubin's living expenses are less than his annual income {Slip Opn. Page 5} and would remain constant for the rest of his life; and there were sufficient assets in the trust to satisfy the gifts to Ms. Joseph.
- ◆ On April 9, 2003, the probate court instructed the trustee to make the \$200,000 and \$100,000 distributions to Ross and Mr. Brown.

NOTE HERE THAT SEVERAL TRIPS TO COURT ARE REQUIRED. THE TRUSTEE SEEMS TO HAVE LIMITED DECISION-MAKING ABILITIES, AND MUST CONSULT WITH THE JUDGE BEFORE ACTION CAN BE TAKEN CONCERNING THIS TRUST. THE OTHER PUZZLING MATTER ABOUT THIS IS, WHY WERE MS. JOSEPH AND SANDY WOLF GIVEN GIFTS, AND NOT HIS TWO SONS? THE RIGHTFUL BENEFI-

CIARIES WERE SOMEHOW LEFT OUT OF THE NORMAL DISBURSEMENT.

In a Common-Law Trust, the Trustees have the power to make these decisions without a court order based on either Trust Capital Units (TCUs) held by the Beneficiaries, or Units of Beneficial Interest (UBIs) held by the Beneficiaries. In the Common-Law Trust setup, the normal distribution would be uninterrupted by Mr. Rubin's incompetency or by his death.

On November 10, 2005, Mr. Brown filed an amended petition: to set aside the Tenth Amendment to the Rubin Brown Living Trust; for determination of nonademption of a specific gift of stock under the trust; and for removal of Ms. Labow as successor trustee.

AFTER RECEIVING THE AFOREMENTIONED DISTRIBUTION, MR. BROWN NOW HAD ENOUGH MONEY TO BRING THIS MATTER TO COURT. HE STATES THE 10<sup>TH</sup> AMENDMENT DID NOT HOLD BECAUSE THE STOCK WAS SOLD, AND THUS, CAUSED AN ADEPTION.

On the first day of trial, Mr. Brown abandoned his challenge to the validity of the Tenth Amendment to the trust. The November 10, 2005 amended petition alleged that Rubin died on November 3, 2004. The amended petition further alleged:

- Mr. Brown was a beneficiary of a specific gift of the trust originally dated February 14, 1983 and restated on March 21, 1994;
- Rubin executed a Tenth Amendment to the trust on October 13, 1995, the Eleventh Amendment to the trust on January 3, 1996, and the Twelfth Amendment to the trust on April 3, 1996;
- Rubin was declared incapacitated and under a conservatorship of his person and estate from July 25, 1996 until his death; and as a result of his incapacity, the Eleventh and Twelfth Amendments to the trust were revoked by court order on November 19, 1997.

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- It was alleged that the main asset of the trust was the stock of Brown Wholesale Electric which was sold by the conservator and successor trustee, Ms. Labow, in January 1998. On January 2, 1998, Ms. Labow while acting as Secretary of Brown Wholesale Electric with Ross acting as President executed a Certificate of Election to Wind Up and Dissolve the corporation.
- A fourth account filed with the probate court on November 18, 2004, valued the trust assets at \$11 million. Mr. Brown contended that sale of the stock changed the intent of the Ninth Amendment to the trust which gifted 30 percent of the stock to Brown Wholesale Electric stock to him. Citing Probate Code fn. 2 section 21134 and Estate of Packham (1965) 232 Cal.App.2d 847, 849, {Slip Opn. Page 6} Mr. Brown asserted that there had not been an ademption of the specific gift of stock to him which occurred during the conservatorship.

### *Alleged Trustee Violation*

Mr. Brown also requested that Ms. Labow be removed as trustee. Mr. Brown argued that Ms. Labow violated her duties to avoid conflict and to deal impartially with the beneficiaries of the trust. Mr. Brown contended:

- Ms. Labow violated the loyalty duty by violating the December 4, 1996 order not to sell the stock without prior permission of the probate order;
- Ms. Labow had decimated the specific stock gift to him;
- Ms. Labow reallocated millions of dollars to Ross, the remainder beneficiary; as a minority shareholder he was not afforded the opportunity to oppose the liquidation or the consequences to the shift of his specific gift to the remainder of the trust estate; and that Ms. Labow be surcharged.

Ms. Labow responded to Mr. Brown's amended petition as follows.

- ◆ Ms. Labow argued that Ross and Ms. Joseph were major beneficiaries of the trust;
- ◆ Mr. Brown's interest was comparably smaller being 30 percent under the Ninth Amendment or 10 percent under the Tenth Amendment; and shares of stock in Brown Wholesale Electric were owned by the trust and thus were under the management and control of the trustee.

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- ◆ Ms. Labow contended that she never sold the shares of stock of Brown Wholesale Electric in any capacity including as conservator or as a successor trustee of the trust.
- ◆ Ms. Labow asserted that the assets of Brown Wholesale Electric were sold in 1998 pursuant to an agreement negotiated and approved by its board of directors. The board consisted of Ross, Mr. Brown, and Ray Sullivan. Ms. Labow further contended that the asset sale of Brown Wholesale Electric (as opposed to a stock sale) was at the direction and with his full knowledge. (It bears emphasis in 1998, Rubin, was the subject of the September 9, 1996 probate conservatorship order. Rubin was never declared competent prior to his death in November 2004.)
- ◆ Four years after the assets were sold, Brown Wholesale Electric was liquidated and dissolved.

Ms. Labow contended that section 21134 does not apply to this case because the express language of the statute limited its application to sales by a conservator. {Slip Opn. Page 7} According to Ms. Labow, section 21134 is inapplicable because:

- ◆ there was no sale; her participation in the asset sale of Brown Wholesale Electric was as the trustee of the trust and as a secondary officer of the corporation;
- ◆ section 21134 does not apply to trusts; the nonademption statutes in section 21101 et seq. and specifically, section 21134, have no application to trust law which has no provision on the subject;
- ◆ the holding of Estate of Packham, supra, 232 Cal.App.2d at page 847 predates California's conformity to the Uniform Probate Code; and Estate of Packham only applies in cases where there is a guardianship.

Ms. Labow asserted an ademption occurred because:

- ◆ Rubin, who objected to the conservatorship, clearly expressed an intent to sell Brown Wholesale Electric and retire;
- ◆ Rubin had shown an intent to decrease Mr. Brown's interest in the stock of Brown Wholesale Electric with the Ninth and Tenth Amendments to the trust in favor of Ms. Joseph (by increasing her gift) and Ross (by increasing his share of the stock and making him the sole residual beneficiary of the trust);

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- ◆ and the 2003 and 2004 distributions to Ross and Mr. Brown do not conclusively demonstrate an intent of nonademption but merely established the brothers failed to disclose to the probate court the existence of the Tenth Amendment to the trust.

Ms. Labow argued that she should not be removed as the trustee because she is a registered professional conservator and fiduciary. Ms. Labow denied that she had breached her fiduciary duties under sections 16002, 16003, or 16006. Ms. Labow asserted:

- ◆ the trust was revocable; pursuant to section 15800, in her capacity as a trustee her sole duty was to benefit Rubin;
- ◆ as trustee, she impartially administered the trust in the best interests of all persons and preserved all trust property; as trustee, she did not assign, transfer, alienate, or encumber the stock in Brown Wholesale Electric but voted to sell the assets and dissolve the corporation;
- ◆ Mr. Brown participated as an officer, director, and shareholder in the sale of the corporation's assets;
- ◆ as trustee, Ms. Labow recovered the value of the conservatee's stock for the inter vivos trust as liquidating dividends;
- ◆ as trustee, Ms. Labow reported the sale and liquidation to the probate court in January 2001; {Slip Opn. Page 8} the probate court approved the sale of assets and liquidation in March 2001;
- ◆ as trustee, Ms. Labow did not violate any court order and reported her activities to the probate court which approved and confirmed her action;
- ◆ and Mr. Brown did not suffer any losses or damages requiring a surcharge.

### ***Statutory Compromise Offer***

On June 13, 2006, the probate court issued an order quashing the acceptance by Mr. Brown of Ross's Code of Civil Procedure section 998 statutory compromise offer. The circumstances of this controversy arose after Ross and Ms. Joseph, jointly served Mr. Brown with a statutory compromise offer on March 8, 2006. The offer provided for a \$500,000 payment free of estate taxes in consideration for:

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- a dismissal with prejudice of all petitions, including actions against Ms. Labow;
- a stipulation as to the validity of the Tenth Amendment to the trust and the redemption of the specific gift of stock;
- a full release of all parties and their attorneys from liability; and each party bearing its own costs and fees.

The statutory settlement offer was set to expire on March 10, 2006. According to William W. Holcomb, counsel for Ross, Katerina Smith, Mr. Brown's attorney, made certain oral counter proposals. Mr. Holcomb declared that, on March 23 and 27, 2006, he spoke to Ms. Smith by telephone. Mr. Holcomb advised Ms. Smith that Ross would not accept the counter proposals. Mr. Holcomb further declared that he spoke with Ms. Smith twice by telephone on March 30, 2006, for almost an hour.

During those conversations, Mr. Holcomb advised Ms. Smith that Ross no longer agreed to the terms contained in the statutory settlement offer. Mr. Holcomb explained that the statutory settlement offer was void. Mr. Holcomb advised Ms. Smith that Ross would only settle the lawsuit if Mr. Brown agreed to a global settlement containing new terms which were not in the statutory offer. Ms. Smith agreed to talk to Mr. Brown. On April 6, 2006 Mr. Brown sent a written acceptance of the offer by letter to Mr. Holcomb, which had been filed with the court.

On April 13, 2006, Ross filed an ex parte application to quash acceptance of the offer. The probate court granted Ross's motion to quash the acceptance of the statutory settlement offer on May 9, 2006.

On June 23, 2006, Mr. Brown filed a mandate petition challenging the probate court's May 9, 2006 order. The {Slip Opn. Page 9} petition was denied on June 30, 2006. (Brown v. Superior Court (June 30, 2006, B191867) [nonpub. order].)

### ***B. Testimony [There is no "A."]***

Ms. Labow testified that, after she was appointed conservator, Rubin remained incompetent until his death. Ms. Labow believed Rubin was not competent to handle his financial affairs. Ms. Labow testified that she and Rubin had a conversation where he affirmed his desire to sell the business so he "could enjoy life." According to Ms. Labow, Rubin told her that the desire to sell had existed prior to the institution of the conservatorship. Rubin also told Ms. Labow the plan to sell had been started prior to the sale. Ms. Labow believed Rubin "maintained the capacity to be able to tell [her] an overall direction" in terms of the business. Ms. Labow did not differ with Rubin on the

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sale because it seemed logical. In response to a deposition question concerning the Eleventh and Twelfth Amendments to the trust which the trustee sought to set aside, Ms. Labow testified that she did not consult Rubin about the amendments.

According to Ms. Labow: “Without being rude to Rubin, you don't ask the loon whether you should do something. I had already come to the conclusion that Rubin didn't know what he was doing.”

HERE WE SEE, AGAIN, WHERE AN IRREVOCABLE TRUST OF ANY TYPE WOULD HAVE SOLVED MANY OF THESE PROBLEMS. THE TRUSTEES, BEING IN FULL CONTROL, NEED NOT WORRY ABOUT THE ACTIONS OF THE GRANTOR, AS THE TRUSTEES' JOB IS TO ACT ON BEHALF OF THE BENEFICIARIES, AND THE DECISION TO SELL THE STOCK REMAINED WITH THE TRUSTEES. IF THE GRANTOR HAD RETAINED CONTROL OF THIS DECISION, THE TRUSTEES WOULD BE STILL IN CONTROL OF THE ASSET AND THEIR JUDGMENT AND COOPERATION WOULD BE REQUIRED. SHOULD THE GRANTOR KEEP THE POWER AND THE TRUSTEES FAIL TO FOLLOW HIS DIRECTION, THIS BRINGS UP A PROBLEM THE TRUST PROTECTOR NEEDS TO RESOLVE. IF THE TRUST PROTECTOR DETERMINES THE TRUSTEES ADHERE TO THE INDENTURE, AND THE DECISION IS FOR THE BENEFICIARIES, THEN THE TRUST PROTECTOR IS NOT LIKELY TO FIRE THEM.

Ms. Labow also testified at her deposition that when she voted the shares of trust concerning the election to wind up and dissolve Brown Wholesale Electric, she was acting as the conservator and not the trustee.

THE REFERENCE TO “SHARES OF TRUST” SEEMS TO MEAN THE TRUST HELD SHARE OF BROWN WHOLESALE ELECTRIC, AND IT WAS THESE SHE VOTED.

Ms. Labow testified that she did not recall whether she was the trustee in January 1998. Ms. Labow testified: “I mean to be honest I don't differentiate greatly between my role as conservator and my role as trustee . . . .” At trial, Ms. Labow testified that she voted the shares as the trustee because she would not have had the right to do so as the conservator. Ms. Labow understood her duties were to carry out Rubin's intent as



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expressed in the original trust and as amended by the Ninth and Tenth Amendments.  
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Ross testified that he has been an inactive member of the State Bar since 1970. In 1995, Ross managed the three Hawaii branches of Brown Wholesale Electric. In 1996, sometime after Rubin had a stroke, Ross returned from Hawaii. Ross became concerned that Rubin was making decisions which were not in the best interests of Brown Wholesale Electric. Brown Wholesale Electric was Rubin's "number one" priority. Rubin's questionable decisions caused Ross to file the petition to institute a conservatorship.

Ross served as conservator until Ms. Labow was appointed in that capacity. Nothing occurred after the petition was filed to change Ross's opinion as to the propriety of instituting conservatorship proceedings. The conservatorship remained in place until Rubin's death. After the conservatorship was in place, Ross was the president and chief executive officer and a minority shareholder of Brown Wholesale Electric. Ross continued to run Brown Wholesale Electric at Ms. Labow's request after she was appointed conservator.

Although Ross was a board member, he never attended any board meetings. This was because there were never any board meetings to attend.

CORPORATIONS CAN GET AWAY WITH NOT HAVING  
MEETINGS; IRREVOCABLE COMMON-LAW TRUSTS CAN-  
NOT.

The corporate minutes reflect that in 1994, Rubin was authorized to sell Brown Wholesale Electric. Ross signed the minutes but did not remember that if had done so.

WE HAVE NOW GONE OVER THE VALUE OF MINUTES AND  
MEETINGS ENOUGH SO THAT YOU UNDERSTAND THIS  
ISSUE.

Ross did not know what Rubin's intentions were prior to July 25, 1996, the date the conservator petition was filed, about selling Brown Wholesale Electric. In July 1996, Ross obtained information from a third party that Rubin was about to sell Brown Wholesale Electric or buy another business. When deposed, Ross testified that Rubin had been considering selling Brown Wholesale Electric.



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In the Common-Law Trust, the Beneficiaries are not consulted about decisions to buy or sell stock, but can be asked their preference, since the Trust is set up for their benefit.

When asked the basis for his deposition testimony, Ross testified, "What the attorney told me." Immediately after his deposition testimony was read at trial, Ross was asked, "So the only basis for your knowledge then in that regard of what your father wanted to do is something an attorney told you, right?" Ross responded, "Only in the case of selling the business."

After the conservatorship was in place, Ross and Rubin had discussions about selling Brown Wholesale Electric. Rubin wanted Ross to sell Brown Wholesale Electric so that Rubin could enjoy the fruits of his labor. Rubin did not tell Ross to sell the assets {Slip Opn. Page 11} of Brown Wholesale Electric as opposed to selling the stock or any variation of such a potential transaction.

Ross did not learn about the Tenth Amendment to the trust until the present litigation commenced in 2005. However, Ross admitted that he signed a declaration in February 2002. Ross's declaration admitted that the Tenth Amendment to the trust called for a specific 10 percent stock gift to Mr. Brown. Ross stated that Rubin never discussed anything about the trust. Nor did Rubin discuss any personal matters with Ross.

In a Common-Law Trust, this is what we want to avoid: "Ross stated that Rubin never discussed anything about the trust. Nor did Rubin discuss any personal matters with Ross." Clearly with no communication between Grantor and Beneficiaries, misunderstandings can occur. The awkwardness of a Living Trust about the fear that the Beneficiaries want everything now, or considerations about the fairness of the distribution, prevent the Grantor from discussing with heirs his thoughts, as well as sharing his wisdom. Placing assets in the hands of third parties gets most of these issues out of the way to allow for an open discussion of many aspects of inheritance.

If the Grantor wants to keep each Beneficiary's inheritance a secret from the others, then each Beneficiary can be named on a separate Trust. Allegedly, the Kennedy Trusts are set up

this way, and none of the Kennedy children knows the inheritance of the other.

The terms of the asset sale of the corporation were negotiated by Ross in 1997. The buyers dictated the terms of the asset only sale. The sale took place in 1998 and the windup of Brown Wholesale Electric was completed in 2003 or 2004. According to Ross, Ms. Labow wore “two hats,” conservator and trustee. Ross testified: “The decision to sell the business had nothing to do with the conservatorship. It had to do with the trusteeship because that was the thing my dad wanted, to sell the business. And so I agreed to sell the business because that what my dad wanted.”

IN A DURABLE POWER OF ATTORNEY, THE PERSON SETTING IT UP CHOOSES THE HEALTH CARE AGENT, THE SUCCESSOR AGENTS, AND THE CONSERVATOR. THE HEALTH CARE AGENT MAKES DECISIONS CONCERNING ONE’S HEALTH CARE, AND HAS THE AUTHORITY TO ORDER THE DISCONNECTION OF LIFE SUPPORT. THE CONSERVATOR HAS BROADER POWERS, INCLUDING THE ADMINISTRATION OF THE FINANCIAL AFFAIRS. AS WE CAN SEE FROM THIS COURT CASE, IT IS PROBABLY BEST TO ENSURE THE CONSERVATOR AND THE TRUSTEE ARE NOT THE SAME PERSON. WE DISCOURAGE ANY TRUSTEE FROM BECOMING A HEALTH CARE AGENT BECAUSE OF A CONFLICT OF INTEREST.

*C. The Probate Court's Decision*

In the statement of decision, the probate court found that the Tenth Amendment was a “valid document.” The probate court ruled the stock gifts were addecmed. The ademption occurred because there was a distribution after the corporation was dissolved and liquidated but before Rubin's death within the meaning of sections 21132 and 21133. The probate court also ruled section 21134 does not apply to this case because:

- ♦ Ms. Labow did not participate in the sale of the assets of Brown Wholesale Electric as a conservator; the stock was not owned by Rubin but was owned by the trust;

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- ◆ Ms. Labow participated in the asset sale as a trustee; and neither the Uniform Probate Code nor the Uniform Trust Code provide an exception to ademption caused by a trustee.

HERE AN ADEPTION DID OCCUR BECAUSE FUNDS WERE  
TAKEN OUT OF THE TRUST, SO THEY COULD NOT BE  
PASSED ON TO THE BENEFICIARIES.

The probate court also found that

- ◆ Ms. Labow had not breached a fiduciary duty as trustee and should not be removed: Ms. Labow's duties as the trustee of a revocable trust {Slip Opn. Page 12} were controlled by section 15800 and were owed solely to the conservatee, Rubin;
- ◆ Ms. Labow acted reasonably and in good faith as a trustee (§ 16440, subd. (b));
- ◆ and Ms. Labow's actions were reasonable.

As evidence of Ms. Labow's reasonableness, the probate court cited:

- ◆ the asset sale, liquidation, and dissolution of the corporation was in compliance with California law;
- ◆ Mr. Brown signed the documents related to the transactions;
- ◆ she was concerned with litigation over gifts which had been made to the University of California at Los Angeles under Eleventh and Twelfth Amendments to the trust;
- ◆ she needed money to resolve the litigation and to provide for Rubin's care during his lifetime; and she consulted with managers and other professionals.

The probate court also found pursuant to section 2580 Ms. Labow did not have a duty as a conservator and could not be held liable for her failure to propose any actions pertaining to the doctrine of substituted judgment.

The probate court entered its order concurrently with the statement of decision. This timely appeal followed.

### III. DISCUSSION

#### *A. Introduction*

This case concerns the loss of a specific gift of stock to a beneficiary of a revocable trust after the trustor was declared incompetent. The primary asset of the trust was 95 percent ownership of the stock of Brown Wholesale Electric. The matter is more complicated because the loss of the gift resulted from an asset sale as opposed to a stock sale of a closely held corporation. The asset sale followed by a dissolution of the corporation as opposed to an outright stock sale resulted in the dissipation of the value of stock at the time of Rubin's death. It is undisputed that the stock was the primary asset of the conservatorship estate. Ms. Labow was also appointed as successor trustee of the revocable trust after she had been appointed Rubin's conservator. Ms. Labow, while {Slip Opn. Page 13} acting as trustee and an officer and director of Brown Wholesale Electric, participated in the asset sale, which resulted in the loss of stock value by the time of Rubin's death. Although the issues were litigated in the probate court, in his briefs on appeal, Mr. Brown has not asserted that Ms. Labow should be removed as the trustee or she should be surcharged for any conduct. Thus, any arguments in that regard have been waived. (*Tiernan v. Trustees of Cal. State University & Colleges* (1982) 33 Cal.3d 211, 216, fn. 4; *Johnston v. Board of Supervisors of Marin County* (1947) 31 Cal.2d 66, 70, disapproved on another point in *Bailey v. County of Los Angeles* (1956) 46 Cal.2d 132, 139.)

#### *B. The Ademption Issue*

In *Estate of Mason* (1965) 62 Cal.2d 213, 215, the California Supreme Court explained an ademption as follows: "Ademption of a specific legacy is the extinction or withdrawal of a legacy in consequence of some act of the testator equivalent to its revocation, or clearly indicative of an intention to revoke. The ademption is effected by the extinction of the thing or fund bequeathed, or by a disposition of it subsequent to the will, which prevents its passing by the will, from which an intention that the legacy should fail is presumed." [Citations.] (See also *Estate of Resler* (1954) 43 Cal.2d 726, 735-736; *Estate of Creed* (1967) 255 Cal.App.2d 80, 83-84.) Section 21134, subdivision (a) states, "Except as otherwise provided in this section, if after the execution of the instrument of gift specifically given property is sold or mortgaged by a conservator or by an agent acting within the authority of a durable power of attorney for an incapacitated principal, the transferee of the specific gift has the right to a general pecuniary gift equal to the net sale price of, or the amount of the unpaid loan on, the property."

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Ms. Labow, Ms. Joseph, and Ross contend that section 21134 is inapplicable to this case. Their argument is as follows. In their view, section 21134 is only relevant only when there is a sale of the specific gift by a conservator but not a trustee. An ademption occurred in this case because there was no sale of stock by Ms. Labow in her capacity as {Slip Opn. Page 14} conservator; rather, there was an asset sale by Ms. Labow in her capacity as trustee of an intervivos trust. Ms. Labow, Ms. Joseph, and Ross acknowledge section 21134 prohibits a conservator from causing an ademption. But they argue no comparable statutory trust provision prevents a trustee from causing an ademption of an incompetent person's specific gift.

### *Asset Sale by the Trustee*

For the reasons stated below, we disagree with the contention of Ms. Labow, Ms. Joseph, and Ross no ademption occurred in that there was no sale by a conservator but merely an asset sale by a trustee. Rather, we conclude that no ademption occurred in this case because there was only a change in form and there was no substantial evidence that Rubin intended for the gift to Mr. Brown to fail. Our decision is premised on controlling California Supreme Court authority, *Estate of Mason*, supra, 62 Cal.2d at pages 215-216 and its progeny, which have not been statutorily abrogated.

### *California Ademption Law*

We begin by analyzing California ademption law as it has developed since January 1965. California decisional authority regarding ademption of specific gifts of incapacitated persons evolved in the context of adult guardianship proceedings. In 1979, the Legislature converted all adult guardianships into conservatorships. (Stats. 1979, ch. 726, § 3, p. 2341; former § 1485.) The rationale of the replacing adult guardianships with conservatorships was to reduce the stigma attached to elderly persons being labeled “mentally incompetent” who were in need of assistance in managing their personal and financial affairs. (See *Union Bank v. Superior Court* (2004) 115 Cal.App.4th 484, 488-489; *Guardianship-Conservatorship Law with Official Comments* (June 1980) 15 Cal. Law Revision Com. Rep. (1980) pp. 451, 463, 477-478.) Thus, we cite California case law which refers to adult guardians of incapacitated persons.

- Under California ademption law, the guardian or conservator of a person, who is not competent, cannot cause an ademption of a specific gift when the incapacitated individual dies without regaining competency. (*Estate of Mason*, supra, 62 Cal.2d at p. 215.)

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- In *Mason*, Mary Mason devised her home to Robert T. Fairbank, her grandson. (Ibid.) After making her will, Ms. Mason became mentally incapacitated and a guardian, Security Pacific Bank, was appointed. (Ibid.) The guardian, with court approval, sold the {Slip Opn. Page 15} home and kept the proceeds of the sale in a separate account which was then used to support the Ms. Mason who remained incompetent until her death. (Ibid.) The Supreme Court concluded, if the testator has disposed of the property and it cannot be traced to any other property in the estate, there is an ademption. (Id. at p. 215.) However, when the specific property has been disposed of by a guardian during a period of incapacitation from which the testator does not recover, there is no ademption of the specific property when the only change is in form. (Id. at pp. 215-216.)
- If the guardian of a mentally incapacitated person sells property subject to a testamentary instrument, the beneficiary will receive the proceeds of the sale in the absence of proof that the testator intended an ademption. (Id. at p. 215.) The Supreme Court explained the rationale for this rule thusly: “The reasons for refusing to find an ademption upon the guardian's sale are:
  - (1) The incompetent testator lacks intent to adeem [citation] and the opportunity to avoid the effect of an ademption by making a new will. [Citations.]
  - (2) A contrary rule would allow the guardian, by changing the form of guardianship property, to determine the distribution of the estate. [Citation.]” (Id. at p. 216.)

### *Estate of Mason*

This rule prohibiting ademption by the actions of a guardian of an incapacitated person is also illustrated in two post-Estate of Mason Court of Appeal opinions. The first opinion is *Estate of Packham*, supra, 232 Cal.App.2d at pages 848-849. In *Estate of Packham*, Elisabeth B. Packham devised an interest which she might own at the time of her death in a residence or a sum equal to the net proceeds of the sale of the home. (Id. at p. 848.) The precise interest to be devised was described as follows in Ms. Packham's will,

*“Any interest in the residential real property known as 57 Amador Avenue, Atherton, California, which I may own at the time of my death, or a sum equal to the net proceeds of sale of any said interest occurring during the administration of my estate.”* (Ibid.)

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A bank was appointed as Ms. Packham's guardian after she was found to be incapacitated. Ms. Packham did not regain competency prior to her death. (Ibid.) During the time Ms. Packham was incapacitated, the guardian sold the residence, which sale was confirmed by the court. (Ibid.) As a result, Ms. Packham's niece received neither the {Slip Opn. Page 16} residence nor the proceeds from the sale. Relying on Mason, the Court of Appeal in Packham held the guardian's sale of the residence while Ms. Packham was incapacitated did not result in an ademption. (Id. at pp. 848-849.) Therefore, Ms. Packham's niece was entitled to the sale proceeds.

The second post-Estate of Mason decision, to discuss ademption of property of an incapacitated person is Estate of Ehrenfels (1966) 241 Cal.App.2d 215, 218-228. In her will, Camille Ehrenfels, bequeathed a specific gift of Standard Oil stock "as presently constituted" to the beneficiaries with a provision that if the shares changed by splitting or otherwise, the legacies would be satisfied with the changed shares. (Id. at p. 218.) After Ms. Ehrenfels executed the will, the stock split. Two years later, Ms. Ehrenfels was found to be incapacitated and a guardian, Virginia Williams, was appointed. (Id. at pp. 218-219.) Ms. Williams, with court approval, subsequently exchanged the split Standard Oil stock for shares in a mutual fund. (Id. at p. 219.) Ms. Ehrenfels, the testatrix, died without regaining competency. (Ibid.)

### *Estate of Ehrenfel*

In Estate of Ehrenfel, the Court of Appeal described the Supreme Court's analysis in Estate of Mason, supra, "62 Cal.2d at page 216, thusly: "In Mason, however, it was held that in the absence of proof that the testator intended an ademption, the sale of property specifically bequeathed in the testator's will by the guardian of the estate of the testator during an incompetency from which the testator does not recover does not adeem the specific bequest. (See also Estate of Packham, 232 Cal.App.2d 847, 848-849.)

In Mason the court was concerned with the manner of satisfying a specific bequest where the guardian had sold the specifically devised property and had consumed a substantial amount of the proceeds from this sale to support the incompetent testatrix until her death. Under such a factual situation the Supreme Court concluded that the devisee of the specifically devised property was entitled to have his devise satisfied in full from the residue of the decedent's estate." (In re Estate of Ehrenfel, supra, 241 Cal.App.2d at pp. 226 -227.) The Court of Appeal concluded: "The holding in the Mason and Packham cases to the effect that when the guardian of a mentally incompetent testator has sold {Slip Opn. Page 17} property which is the subject of a specific



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gift in his ward's will, the beneficiary is awarded the proceeds of the sale has been followed by cases in other jurisdictions. These cases were cited with approval in Mason. [Citations.]” (In re Estate of Ehrenfels, *supra*, “241 Cal.App.2d at p. 227.”)

In terms of the remedy available to a beneficiary of a bequest of property by an incapacitated person which has been sold, the Court of Appeal in Estate of Ehrenfels explained: “In Mason the Supreme Court speaking of the ademption of a specific bequest noted that an ademption takes place “when the specific property has been disposed of by the testator and cannot be traced to other property in the estate. . . .” (Italics partly added; p. 216.) In [6 Page, Wills (Bowe- Parker Rev. 1962) § 54.18, pp. 271, 272] the authors, citing some of the cases in the other jurisdictions relied upon in Mason, state that ‘it is generally held in the United States that the sale, collection, and the like by the guardian does not adeem a specific devise or legacy; and that the devisee or legatee takes the proceeds as far as they can be traced.’” (Italics added; p. 272.)” [¶] It is apparent that Mason does not prohibit the guardian of a person who has become incompetent after making his will from selling, exchanging or reinvesting, pursuant to lawful authority, property which is the subject of a specific devise or legacy under the will. While the guardian's act in so doing does not adeem the specific devise or legacy it relegates the devisee or legatee to taking the proceeds of the sale as far as they can be traced.” (In re Estate of Ehrenfel, *supra*, “241 Cal.App.2d at pp. 227-228.”)

No California cases have directly addressed the ademption issue when stock is bequeathed and the corporation is subsequently dissolved, which occurs after the testator becomes incapacitated. Three out of state decisions that have addressed the similar issues have held that no ademption occurs upon dissolution of a corporation. (Mitchell v. Mitchell (Ark. 1945) 187 S.W.2d 163, 164-165 [no guardianship but bequest of stock not adeemed by the dissolution of the corporation and continuance of enterprise as personal business where the testator's interest remained substantially the same]; Buder v. Stocke (Mo. 1938) 121 S.W.2d 852, 857-858 [a guardian's liquidation of corporation did not {Slip Opn. Page 18} adeem bequest of stock owned solely by testator]; Pope v. Hinckley (Mass. 1911) 95 N.E. 798, 799 [no ademption where dissolution of New Jersey corporation followed by formation of a Connecticut corporation and testator's rights in new entity dependent on rights in first company].) No decision reaches the conclusion asserted by Ms. Labow, Ms. Joseph, and Ross that an ademption occurs under circumstances similar to this case.

Here, Rubin executed a revocable trust giving a specific stock gift to Mr. Brown. On or around November 1997 and January 1998, after Rubin was adjudicated to require



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the assistance of a conservator, the directors, the officers, the shareholders, and the successor trustee, Ms. Labow, adopted resolutions approving: the liquidation and dissolution of Brown Wholesale Electric; the sale of assets and real property; and a corporate name change. Mr. Brown and Ross each served as the directors, the officers, the shareholders during the process. Ms. Labow served as a director, an officer, and the successor trustee in making the decision to sell the corporation's assets. Ross testified that the buyer dictated the terms of the sale which consisted of an asset, as opposed to a stock, sale. Although no stock was sold, the funds from the asset sale were distributed to the shareholders according to their proportionate interests in the corporation. In her capacity as successor trustee, Ms. Labow advised the probate court, "The 95.54% interest of the stock in Brown Wholesale Electric Company owned by the within Trust and recovered for the benefit of the Trust and Trustor has been valued at [\$23,221,895.02], which represents the value after the sale of the assets, the payment of corporate debts, and the receipt of liquidating dividends." There is no dispute that during the time of the asset sale, Rubin was under a conservatorship and remained incompetent until his death in 2004. Even though the stock was not sold, by the time of Rubin's death, it was rendered valueless by an asset sale which Ms. Labow as the conservator failed to prevent. Nevertheless, the asset sale, in turn, resulted in a payment to the conservatorship estate of the proportionate shares of Rubin's stock. The conservatorship estate was paid over \$23 million dollars, which represented the value of the stock owned by the trust. The trust then received the total amount representing the value of the stock. The amount is {Slip Opn. Page 19} traceable. In short, the circumstances of the transaction show that Rubin was never completely divested of an interest in the stock. Thus, the asset sale did not amount to a complete divestiture of Rubin's interest in the stock. Under the circumstances, the asset sale resulted in a change in the form of the stock.

### C. There Is No Substantial Evidence Rubin Intended An Ademption To Occur

As noted, the Supreme Court has explicitly stated that an ademption can lawfully occur if the testator intended such. (*Estate of Mason*, supra, "62 Cal.2d at p. 215; *Estate of Ehrenfels*, supra, "241 Cal.App.2d at p. 227.) There is no substantial evidence Rubin intended that an ademption occur. Section 21102 provides, "[T]he intention of the transferor as expressed in the instrument controls the legal effect of the dispositions made in the instrument." The interpretation of a trust instrument, like any written document, is a question of law. (*Estate of Gump* (1940) 16 Cal.2d 535, 548 [trust]; *Gardenshire v. Superior Court* (2005) 127 Cal.App.4th 882, 888 [trust]; *Scharlin v. Superior Court* (1992) 9 Cal.App.4th 162, 168 [trust]; *Wells Fargo Bank v. Marshall*

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(1993) 20 Cal.App.4th 447, 452-453 [trust]; Estate of Guidotti (2001) 90 Cal.App.4th 1403, 1406 [will] citing *Parsons v. Bristol Development Co.* 1965) 62 Cal.2d 861, 865.) Under applicable rules of interpretation of written instruments, where there is no conflicting evidence, the reviewing court must independently interpret the document. (Estate of Goyette, (2004), 123 Cal.App.4th 67, 71; Estate of Dye, (2001), 92 Cal.App.4th 966, 976; *Ike v. Doolittle* (1998) 61 Cal.App.4th 51, 73.) Thus, we exercise our independent judgment where conflicting inferences may be drawn from unconverted evidence. (Estate of Guidotti, *supra*, 90 Cal.App.4th at p. 1406; *Ike v. Doolittle*, *supra*, 61 Cal.App.4th at p. 73.) The paramount rule in construing such an instrument is to determine intent from the instrument itself and in accordance with applicable law. (Estate of Goyette, *supra*, 123 Cal.App.4th at p. 71; Estate of DeLoreto (2004) 118 Cal.App.4th 1048, 1052; Estate of {Slip Opn. Page 20} Dye, *supra*, 92 Cal.App.4th at pp. 976-977; Estate of Verdisson (1992) 4 Cal.App.4th 1127, 1135.)

In the case at bench, Ms. Labow, Ms. Joseph, and Ross argue Rubin's intent to adeem the property can be established from the absence of another term in the trust providing for the circumstances that occurred here; i.e., an asset as opposed to a stock sale. According to Ms. Labow, Ms. Joseph, and Ross, an inference must be made that Rubin lacked the intent to prevent the ademption because, by the time of the Tenth Amendment to the trust: Rubin had decreased the specific gift to Mr. Brown to 10 percent of the stock; Rubin had increased the gift of stock to Ross to 90 percent; Rubin had continued to make Ross the residual beneficiary of the trust; and Rubin had increased the gifts to his long time companion, Ms. Joseph. Even if Rubin reduced the stock gift to 10 percent by executing the Tenth Amendment to the trust, the relevant point is that, while competent, Rubin made a specific stock gift to Mr. Brown. Thus, the only intent that may be inferred from the language in the trust is that Rubin made specified gifts to his sons upon death.

### ***Rubin Brown's Intention***

Furthermore, we are not persuaded that Rubin's intent to adeem the specific gift may be found based on testimony from Ms. Labow and Ross that Rubin wanted to sell Brown Wholesale Electric. Ross and Ms. Labow both testified that Rubin intended to sell Brown Wholesale Electric. Whatever intent may have existed regarding a future sale of Brown Wholesale Electric, there is no evidence that Rubin knew that the transaction would not include a stock sale that would render the gift to Mr. Brown worthless. Furthermore, no witness testified that Rubin ever intended the specific stock gift to Mr. Brown to fail in the event the stock was exchanged or not made part of the business

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sale. Rubin made no disposition of the stock while he was competent. Accordingly, there is no substantial evidence Rubin intended to adeem the stock gift by expressing an intent to sell the business prior to the competency proceedings.

Further, there is no merit to the contention that an ademption occurred because Ms. Labow was acting as a trustee when the sale occurred. The basis of this contention is the {Slip Opn. Page 21} theory that section 21134 applies only to the conduct of a conservator but not a trustee. Section 21134, subdivision (a) states, “(a) Except as otherwise provided in this section, if after the execution of the instrument of gift specifically given property is sold or mortgaged by a conservator or by an agent acting within the authority of a durable power of attorney for an incapacitated principal, the transferee of the specific gift has the right to a general pecuniary gift equal to the net sale price of, or the amount of the unpaid loan on, the property.” (Italics added.) Ms. Labow, Ms. Joseph, and Ross argue that section 21134, subdivision (a) does not apply to trustees. As such, they argue that the Legislature intended that a trustee could sell an asset thereby creating a lawful ademption.

Sections 21134, subdivision (a) is not an exhaustive limitation on circumstances where an ademption can occur. Sections 21131 through 21135 were adopted to avoid the harsh effect of an ademption. (Estate of Worthy (1988) 205 Cal.App.3d 760, 765; see Ross, Cal. Practice Guide: Probate (The Rutter Group Rev. # 1 2006) § 15:555, § 16-172.4.) Section 21139 states, “The rules stated in Sections 21133 to 21135, inclusive, are not exhaustive, and nothing in those sections is intended to increase the incidence of ademption under the law of this state.” The Law Revision Commission Comment to section 21139 states, “This section recognizes that the rules stated in Sections 21133-21135 cover a number of special situations where a specific gift is not adeemed but do not cover all situations where a specific gift is not adeemed. This section also makes clear that the inclusion of these specific statutory rules is not intended to increase the incidence of ademption in California.” (31 Cal. Law Revision Com. com., 54A West’s Ann. Prob. Code (2007 ed.) foll. § 21139, p. 195.) There is no evidence the Legislature intended to abrogate the holdings concerning ademption of the holdings of an incapacitated person in Estate of Mason, Estate of Ehrenfels, or Estate of Packham.

This analysis is likewise dispositive of the argument that the adoption of portions of the Uniform Probate Code abrogated the holdings of Estate of Mason, Estate of Ehrenfels, or Estate of Packham. California decisional law has established rules against ademption under the circumstances of this case and nothing in any enactments adopting {Slip Opn. Page 22} provisions of the Uniform Probate Code have altered those decisions. (See

Estate of Worthy, *supra*, 205 Cal.App.3d at p. 766 [where California decisional law does not resolve an issue, the adoption of portions of the Uniform Probate Code may be useful].) Repeals by implication of long established judicial rules are disfavored. (People v. Davenport (1985) 41 Cal.3d 247, 266 [“It should not be presumed that the legislative body intends to overthrow long-established principles of law unless such intention is made clearly to appear either by express declaration or by necessary implication.”]; Fuentes v. Workers' Comp. Appeals Bd. (1976) 16 Cal.3d 1, 7 [“Repeals by implication are not favored. . . .”].)

That Ms. Labow may have been acting as a successor trustee in connection with the stock sale does not resolve the issue of whether an ademption occurred; a conservator could not cause an ademption under these circumstances. The undisputed evidence shows, that Ms. Labow, acting as the conservator, did nothing to preserve Rubin's testamentary intent regarding the stock gift. Her conduct extinguished the specific gift intent at a time when Rubin was incapacitated. The purpose of a conservatorship is to provide a legally competent person to act, under the court's guidance, as the conservatee's agent in the management of estate property. (Board of Regents v. Davis (1975) 14 Cal.3d 33, 43; Conservatorship of Stewart (1969) 276 Cal.App.2d 211, 214.) A conservator has control of the estate, which is held in trust for the benefit of the conservatee. (§ 2401, subd. (a); Middlecoff v. Middlecoff (1959) 167 Cal.App.2d 698, 706; Doran v. Hibernia Savings & Loan Soc. (1947) 80 Cal.App.2d 790, 792 disapproved on a different point in Estate of Propst (1990) 50 Cal.3d 448, 461-462.) A conservator, under the court's scrutiny, has the power to make decisions on behalf of the conservatee. This includes exercising legal rights a conservatee had as a trustor. (§ 2401; Johnson v. Kotyck (1999) 76 Cal.App.4th 83, 87.)

### *Conservator's Actions*

Under the doctrine of substituted judgment, the probate court is empowered to make orders authorizing or requiring the conservator to take a variety of actions with respect to a conservatee's estate plan. (§§ 2580, 2583; Conservatorship of McDowell {Slip Opn. Page 23} (2004) 125 Cal.App.4th 659, 665 disapproved on a different point in Bernard v. Foley (2006) 39 Cal.4th 794, 816 fn. 14; Johnson v. Kotyck, *supra*, 76 Cal.App.4th at p. 87; Conservatorship of Hart (1991) 228 Cal.App.3d 1244, 1250.) The actions that may be taken include to: benefit the conservatee or the estate; minimize current or prospective tax consequences of the conservatorship estate or the estate upon the death of the conservatee; or provide a gift to charities, relatives, friends or other objects of bounty that would likely be a beneficiary of a gift from the conservatee. (§

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2580, subd. (a)(1)-(3).) The probate court may be authorized to grant the conservator the right to exercise the conservatee's right to revoke or modify a revocable trust. (§ 2580, subd. (b)(11).) But section 2580, subdivision (b)(11) limits the probate court's authority to authorize a modification of a revocable trust under these circumstances, "[B]ut the court shall not authorize or require the conservator to exercise the right to revoke or modify a revocable trust if the instrument governing the trust (A) evidences an intent to reserve the right of revocation or modification exclusively to the conservatee, (B) provides expressly that a conservator may not revoke or modify the trust, or (-C) otherwise evidences an intent that would be inconsistent with authorizing or requiring the conservator to exercise the right to revoke or modify the trust."

In this case, the revocable living trust was part the conservatorship estate. Section 3.03 of the trust states: "RIGHT TO AMEND OR REVOKE TRUST [¶] While Trustor is competent, Trustor, acting alone, may from time to time, by written notice signed by Trustor and delivered to the Trustee, amend any provision hereof or revoke this Trust." Section 3.06 of the trust provides: "EXERCISE OF POWERS RESERVED TO TRUSTOR IF TRUSTOR INCOMPETENT [¶] A power reserved to Trustor under this Article may not be exercised by Trustor if Trustor is incompetent (as defined in this Trust) at the pertinent time, but may be exercised by the duly appointed conservator or guardian of Trustor's estate, pursuant to specific court authorization . . . ." Consistent with section 2580, subdivision (b)(11), the trust provides that a conservator may, with probate court approval, revoke the terms of the trust. No prior probate court approval was {Slip Opn. Page 24} obtained to revoke the specific stock gift to Mr. Brown. A valuable asset of the conservatorship estate was dissipated without court authorization or approval. Ms. Labow had no authority or power to unilaterally dispose of property which belonged to the conservatorship estate.

### *D. The Statutory Compromise Offer*

Mr. Brown contends the probate court erred in ruling that Ross could orally revoke the Code of Civil Procedure section 998 statutory compromise offer. Code of Civil Procedure section 998, subdivision (b) provides: "Not less than 10 days prior to commencement of trial . . . any party may serve an offer in writing upon any other party to the action to allow judgment to be taken or an award to be entered in accordance with the terms and conditions stated at that time. The written offer shall include a statement of the offer, containing the terms and conditions of the judgment or award, and a provision that allows the accepting party to indicate acceptance of the offer by signing a statement that the offer is accepted. Any acceptance of the offer, whether made on the



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document containing the offer or on a separate document of acceptance, shall be in writing and shall be signed by counsel for the accepting party or, if not represented by counsel, by the accepting party.”

We disagree with Mr. Brown that the probate court's order refusing to enforce the statutory settlement offer must be reversed because the revocation was communicated orally. Once a Code of Civil Procedure section 998 statutory settlement offer is made, it is subject to revocation. (*Poster v. Southern Cal. Rapid Transit Dist.* (1990) 52 Cal.3d 266, 272 & fn. 2; *Berg v. Darden* (2004) 120 Cal.App.4th 721, 731 & fn. 3.) Our Supreme Court has held: “It is a well-established principle of contract law that an offer may be revoked by the offeror any time prior to acceptance. [Citations.] In light of this firmly established principle of contract law, it is clear that if the Legislature intended to make section 998 offers irrevocable, it would have expressly and unequivocally said so. {Slip Opn. Page 25} It did not. In the absence of such language, the general rule that offers may be revoked prior to acceptance should apply.” (*T. M. Cobb Co. v. Superior Court* (1984) 36 Cal.3d 273, 278, fn. omitted; see *Poster v. Southern Cal. Rapid Transit Dist.*, *supra*, 52 Cal.3d at p. 272.) Code of Civil Procedure section 998, subdivision (b) requires that an offer and acceptance be in writing. But there is no similar provision requiring that a revocation be in writing.

When the statutory settlement provisions do not address an issue, general contract principles may control the outcome of a dispute concerning the enforceability of an acceptance so long as they do not conflict with Code of Civil Procedure section 998 nor defeat its purpose. (*T. M. Cobb Co. v. Superior Court*, *supra*, 36 Cal.3d at p. 280, *Marcey v. Romero* (2007) 148 Cal.App.4th 1211, 1215-1216.) Our Supreme Court has held that the general contract principle that settlement offers are revocable until accepted serves rather than defeat the purpose of section 998. (*T. M. Cobb Co. v. Superior Court*, *supra*, 36 Cal.3d at p. 281; see *Marcey v. Romero*, *supra*, 148 Cal.App.4th at p. 1216.) It is well established that a written offer may be orally revoked. (*Ersa Grae Corp. v. Fluor Corp.* (1991) 1 Cal.App.4th 613, 621; *Bellasi v. Shackelford* (1962) 201 Cal.App.2d 265, 267-268; Civ. Code, §§ 1582, 1583, 1587, subd. (1); 1 Witkin, *Summary of Cal. Law* (10th ed. 2005) “Contracts” § 164, p. 201.)

In this case, on March 30, 2006, Mr. Holcomb (Ross's attorney) discussed the offer in a telephone conversation. Mr. Holcomb stated to Ms. Smith (Mr. Brown's attorney) that the offer was void and that Ross no longer agreed to the terms. Mr. Holcomb and Ms. Smith then apparently discussed new terms that would be raised under an alternative agreement. Ms. Smith stated she would discuss the alternative resolution with her client.

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Mr. Holcomb did not confirm the communication in which the offer was revoked in writing. Thereafter, Mr. Brown through his attorney filed a written acceptance of the offer on April 6, 2006. There is no dispute that Ross, through Mr. Holcomb stated the offer had been revoked on March 30, 2006, prior to its acceptance on April 6, 2006. No authority has been cited that requires a written revocation of a Code of Civil Procedure section 998 statutory compromise offer. Under general contract principles, {Slip Opn. Page 26} revocation may be oral. Accordingly, we conclude the probate court properly quashed the acceptance of the offer under applicable contract principles. (Civ. Code, §§ 1581, 1582, 1583, 1587, subd. (1); *Bellasi v. Shackelford*, supra, 201 Cal.App.2d at pp. 267-268.)

### **IV. DISPOSITION**

The order denying the petition to determine no ademption occurred is reversed. The order granting the motion to quash acceptance of the Code of Civil Procedure section 998 statutory compromise offer is affirmed. Each side to bear their own costs on appeal.

Mosk, J., and Kriegler, J., concurred.

BY READING THROUGH THIS COURT CASE, WE HOPE YOU  
HAVE A DEEPER UNDERSTANDING OF THE ADMINISTRA-  
TION OF THE COMMON-LAW TRUST, ITS FLEXIBILITY  
AND HOW ASSETS CAN BE ACCUMULATED INSTEAD OF  
DISSIPATED.

At this point, we hope you have a sufficient level of understanding to create your own Trust, whether Common Law or Statutory, and to work with those sufficiently trained to advise you correctly, or to change your own Trust so it works more smoothly in the long-run.



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